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Wednesday
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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 4, at 9:00 a.m.
WHERE: Office of the Federal Register.
First Floor Conference Room.
1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to corner of 11th and L Streets

BOSTON, MA

WHEN: May 27, at 9:00 a.m.
WHERE: Room 419
Barnes Federal Building
495 Summer Street
Boston, MA
RESERVATIONS: Call the Federal Information Center, 1–800–347–1997

CHICAGO, IL

WHEN: June 16; 9:00 a.m.
WHERE: Room 328
Ralph H. Metcalfe Federal Building
77 W. Jackson
Chicago, IL
RESERVATIONS: Call the Federal Information Center, 1–800–366–2998

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6436 of May 15, 1992

Bicentennial of the New York Stock Exchange, 1992

By the President of the United States of America

A Proclamation

When 24 New York merchants and brokers gathered on May 17, 1792, to establish rules of conduct for the exchange of securities and to buy and sell orders for those who wanted to trade, they laid the foundation for what is now one of the largest stock exchanges in the world. Today the New York Stock Exchange handles, on average, more than 200 million shares daily and plays a major role in the unique self-regulatory system that aids in the enforcement of the Nation's securities laws. At a time when the peoples of newly emerging democracies are working to establish market economies and to promote the capital formation and investment that are cornerstones of prosperity and progress, we take special pride in the 200th anniversary of the New York Stock Exchange and in the many contributions that the NYSE has made to the development of the United States.

The New York Stock Exchange is, in many ways, a symbol of our Nation's free enterprise system and of the opportunities for savings and investment it provides to all of our citizens. Led by a private board of directors and regulated by the Securities and Exchange Commission, the NYSE offers an efficient market for the trading of securities, thereby facilitating the purchase and sale of stocks, options, futures, and other innovative financial contracts. By providing a vehicle by which businesses can acquire capital and by enabling individual and corporate investors to select portfolios that best fit their needs, the New York Stock Exchange has helped to finance the development of American industry and technology and, in so doing, contributed to the creation of countless jobs.

With 200 years of experience and growth behind them, members of today's New York Stock Exchange are helping to promote American principles of free enterprise around the world. As the economies of the United States and other nations become increasingly interdependent, and as advances in communications and other technologies transform financial markets, the future of the NYSE promises to be as eventful and as distinguished as its past.

The Congress, by Senate Joint Resolution 254, has recognized May 17, 1992, as the bicentennial of the New York Stock Exchange and has requested the President to issue a proclamation in recognition of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby invite all Americans to observe May 17, 1992, the bicentennial of the New York Stock Exchange, in recognition of that institution's role in promoting the economic vitality and growth of the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 92-11985
Filed 5-18-92; 2:58 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6437 of May 18, 1992

Older Americans Month, 1992

By the President of the United States of America

A Proclamation

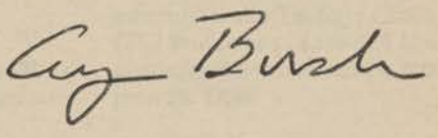
The heart of a nation may well be judged by the amount of respect that it has for its elders. Accordingly, when we pause to honor older Americans, the men and women who have helped to keep the United States free, strong, and prosperous, we show that we are a grateful people.

Older Americans constitute a living link to the past as well as a rich source of experience and wisdom for the future. They are our parents, grandparents, neighbors, and mentors, and, together, they have helped to preserve the rich legacy of freedom that we enjoy today. Through two global conflicts and the Cold War that followed, older Americans labored and sacrificed to defend the light of liberty. Through their creativity and hard work, they developed technology that has enabled us to cross new frontiers in space and science while achieving ever higher levels of industrial and agricultural productivity. Today, millions of older Americans share their talents and expertise with younger generations by engaging in voluntary service, thereby becoming Points of Light. What better way to thank our senior citizens than to ensure that they have access to the opportunities, services, and support that they so rightly deserve.

Each of us can contribute toward that important goal by joining in the National Eldercare Campaign. As part of this campaign, the Federal Government is working to promote partnerships among private voluntary organizations and State and Area Agencies on Aging. These locally established coalitions will help to address the specific needs of the at-risk elderly, thereby enabling millions of older Americans to live with dignity and security in their own homes and communities.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of May 1992 as Older Americans Month. I call on the people of the United States to observe this month with appropriate ceremonies and activities in honor of our Nation's senior citizens.

IN WITNESS WHEREOF, I have hereunto set my hand this 18 day of May, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 92-11986
Filed 5-18-92; 3:01 pm]
Billing code 3195-01-M

Rules and Regulations

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Wednesday, May 20, 1992

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-4135-5]

State of Florida; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Florida has applied for final authorization for revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Florida's revisions consist of the Toxicity Characteristic provisions of HSWA Cluster II promulgated on March 29, 1990 and the correction promulgated on June 29, 1990. The requirements contained in this revision application are in Supplementary Information, section B of this document. The Environmental Protection Agency (EPA) has reviewed Florida's application and has made a decision, subject to public review and comment, that Florida's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Florida's application for program revisions. Florida's application for program revisions is available for public review and comment.

DATES: Final Authorization for Florida shall be effective July 20, 1992 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Florida's program revision application must be received by the close of business June 19, 1992.

ADDRESSES: Copies of Florida's program revision application are available during 8 a.m.–4 p.m. at the following addresses for inspection and copying: Florida Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32300; 904–488–3400; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984, (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–268, 124, and 270.

B. State of Florida

Florida initially received final authorization for its base RCRA program on February 12, 1985 (50 FR 3908, January 29, 1985). Florida has received authorization for revisions to its program through Non-HSWA Cluster II. Florida received authorization for Radioactive Mixed Waste on February 12, 1991. On April 7, 1992, Florida received final authorization for Non-HSWA Cluster III, IV and V. Today Florida is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Florida's application and has made an immediate final decision that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Florida. The public may submit written comments on EPA's immediate final decision until June 19, 1992. Copies of Florida's application for program revisions are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Florida's program revision shall become effective July 19, 1992, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Florida is today seeking authority to administer the Toxicity Characteristic (TC) Provisions of HSWA Cluster II promulgated on March 29, 1990, and June 29, 1990.

Federal requirement	FR reference	Federal promulgation date	State authority
Toxicity	55 FR 11798	3/29/90	403.704(15).
Characteristic Revisions	55 FR 26986	6/29/90	403.72(1), 403.721 (2) and (6), 403.722(5(e), 17-730.030(1), 17-730.180(1)/(2), 17-730.183.

During EPA's review of Florida's application, a concern arose pertaining to the difference in the effective date of Florida's rule (9/10/91) and the effective date of the Federal rule (9/25/90), and its impact on the regulated community. EPA was concerned that Florida's later effective date could potentially allow facilities which do not qualify for interim status under the Federal rules to apply and obtain interim status under state rule once authorization is obtained. EPA considered it important that the State preserve the Federal date under State law. Due to the fact that TC is the first new waste under HSWA which requires a different procedure from past new waste codes, this problem may recur with any new waste codes promulgated under HSWA. EPA contacted the State and suggested language be inserted into their regulations to address this concern. The State has agreed to amend their rules at the next rulemaking to include the clarifying language. EPA is proceeding to authorize Florida because no facilities to date have applied for interim status since the federal effective date of the TC Rule. In addition, EPA prefers to authorize the State rather than continue the dual regulatory scheme that presently exists.

Florida is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Florida's application for program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised.

Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013, and 7003 of RCRA.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 604(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 697(b)).

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92-11804 Filed 5-19-92; 8:45am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-29; RM-7774]

Radio Broadcasting Services; Washington, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dee Broadcasting Corporation, licensee of Station KNEK-FM, Channel 284A, Washington, Louisiana, substitutes Channel 284C3 for Channel 284A at Washington, Louisiana, and modifies KNEK-FM's license to specify operation on the higher powered channel. See 57 FR 07704, March 4, 1992. Channel 284C3 can be allotted to Washington in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.0 kilometers (13.0 miles) southwest to accommodate Dee's desired site. The coordinates for Channel 284C3 are 30-26-45 and 92-09-24. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 29, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-29, adopted May 6, 1992, and released May 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 284A and adding Channel 284C3 at Washington.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-11841 Filed 5-19-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-19; RM-7882]

Radio Broadcasting Services; Memphis, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Boyer Broadcasting Company, Inc., substitutes Channel 263C3 for Channel 263A at Memphis, Missouri, and modifies Station KMEM(FM)'s license to specify operation on the higher powered channel. See 57 FR 5870, February 18, 1992. Channel 263C3 can be allotted to Memphis in compliance with the Commission's minimum distance separation requirements at the petitioner's present transmitter site without the imposition of a site restriction. The coordinates for Channel 263C3 at Memphis are North Latitude 40–29–59 and West Longitude 92–09–58. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 29, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–19, adopted May 5, 1992, and released May 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 263A and adding Channel 263C3 at Memphis.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–11842 Filed 5–20–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–18; RM–7899]

Radio Broadcasting Services; Ravenswood, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rex Osborne, allots Channel 226A to Ravenswood, West Virginia, as the community's second local FM transmission service. See 57 FR 5413, February 14, 1992. Channel 226A can be allotted to Ravenswood in compliance with the Commission's minimum distance separation requirements without the imposition of site restriction. The coordinates for Channel 226A at Ravenswood are North Latitude 38–56–54 and West Longitude 81–45–48. Since Ravenswood is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATES: June 29, 1992. The window period for filing applications will open on June 30, 1992, and close on July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–18, adopted May 5, 1992, and released May 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Channel 226A at Ravenswood.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–11844 Filed 5–19–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No 89–618; RM–7060]

Radio Broadcasting Services; Friona, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Lois B. Crain, permittee of Station KGRW–FM, Channel 236A, Friona, Texas, substitutes Channel 234C2 for Channel 236A at Friona, Texas, and modifies KGRW–FM's construction permit to specify operation on the higher powered channel. See 55 FR 1065, January 11, 1990. Channel 234C2 can be allotted to Friona in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.6 kilometers (13.4 miles) west to accommodate Crain's desired site. The coordinates for Channel 234C2 are North Latitude 34–41–17 and West Longitude 102–56–53. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 29, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumethal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–618, adopted May 1, 1992, and released May 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 236A and adding Channel 234C2 at Friona.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc 92-11843 Filed 5-19-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018 AB55

Conferring Designated Port Status on Baltimore, Maryland

AGENCY: U.S. Fish and Wildlife Service; Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service confers designated port status on Baltimore, Maryland pursuant to section 9(f) of the Endangered Species Act of 1973. The direct importation and exportation of fish and wildlife, including parts and products, will now be permitted through Baltimore, Maryland. The regulations are amended to add Baltimore, Maryland to the list of Customs ports of entry designated for the importation and exportation of wildlife. A public hearing on this proposal was held on December 10, 1991, in room 104, U.S. Customs House, 40 South Gay Street, Baltimore, Maryland.

EFFECTIVE DATE: This rule is effective on May 20, 1992.

FOR FURTHER INFORMATION CONTACT: Special Agent A. Eugene Hester, Assistant Regional Director, U.S. Fish and Wildlife Service, P.O. Box 129, New Town Branch, Boston, Massachusetts, [(617) 965-2298 or FTS 829-9254].

SUPPLEMENTARY INFORMATION:

Background

Designated ports are the cornerstone of the process by which the Fish and Wildlife Service regulates the importation and exportation of wildlife in the United States. With limited exceptions, all fish or wildlife must be imported and exported through such ports as required by section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f). The Secretary of the Interior is responsible for designating these ports by regulation, with the approval of the Secretary of the Treasury after notice and the opportunity for public hearing.

On January 4, 1974, the Service promulgated final rules designating eight Customs ports of entry for the importation and exportation of wildlife (39 FR 1158). A ninth port was added on September 1, 1981, when final rules were published naming Dallas/Fort Worth, Texas a designated port (46 FR 43634). On March 15, 1990, final rules were published naming Portland, Oregon as the tenth designated port of entry. (55 FR 9730).

A proposed rule, including a notice of public hearing, was published in the Federal Register of November 12, 1991 (56 FR 57502).

Containerized air and ocean cargo has become the paramount means by which both live wildlife and wildlife products are transported into and out of the United States. The use of containerized cargo by the airline and shipping industries has compounded the problems encountered by the Service and by wildlife exporters in the Baltimore area. In many instances, foreign suppliers will containerize entire shipments and route them directly to Baltimore. If, upon arrival, the shipment contains any wildlife, those items must be shipped under Customs bond to a designated port for clearance. In most cases, this has involved shipping wildlife products to New York, New York, the nearest designated port, but reshipment has been both time consuming and expensive. To alleviate this problem, Baltimore importers and exporters have attempted to direct entire shipments, even though they contain only a small number of wildlife items, to a designated port prior to their arrival at Baltimore. This method of shipment meets the current regulatory requirements of the Service; however, it is again time consuming and entails additional expense. It is also contrary to the increasing tendency of foreign suppliers to ship consignments directly to regional ports such as Baltimore. In addition, time is a key element when transporting live wildlife and perishable wildlife products. Without designated port status, business in Baltimore cannot import and export wildlife products directly, and consequently may be unable to compete economically with merchants in other international trading centers located in designated ports.

With airborne and maritime shipments into and out of Baltimore steadily increasing, the Service has concluded that the port should be designated for wildlife imports and exports. Conferring this status on Baltimore will serve not only the interests of business in the region, but will also facilitate the mission of the Service in two ways. First, clearance of wildlife shipments in Baltimore will relieve inspectors at the port of New York who are now handling cargo for both ports. Second, it will eliminate the need for the administrative processing of permits by the Regional office that are issued to Baltimore area importers who are able to qualify for those permits on the basis of demonstrated economic hardship. Also, Baltimore's growth as a major east coast port of entry combined with modernization of shipping routes, make it an essential commercial link to the mid-Atlantic area.

Results of Public Hearing and Written Comments

Section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f)(1), requires that the public be given an opportunity to comment at a hearing prior to the Secretary of the Interior conferring designated port status on any port.

Accordingly, the Service held a public hearing on December 10, 1991, from 8 AM to 12 Noon. The hearing was held in room 104 of the U.S. Customs House, 40 Gay Street, Baltimore, Maryland. Eleven persons presented oral and/or written testimony at the hearing, representing Maryland Aviation Administration, Maryland Port Administration, the Baltimore Customs Brokers Association, The Maryland Forum for Animals, Action Against Vivisection, Baltimore Washington Air Cargo Association, Virginia Port Authority, Samuel Shapiro and Company, Inc., and Environmental Investigation Agency. The General Manager of the Port of Baltimore testified that the port sevices two major markets in the United States, one being the mid-west and the other being the Baltimore-Washington area. The Baltimore-Washington market, having the highest median household income in the United States makes it of primary importance particularly because it is in a growth mode and services from the Federal Government are needed to handle this growth. The President of Samuel Shapiro and Company stated that the difficulties encountered by importers using the port of Baltimore without designated port status have included commodity price increases. The limited access to ports along the eastern seaboard, he felt, made Baltimore a strategic location that would benefit many segments of the commercial importing community in the area. The representatives of the Maryland Aviation Administration and the Baltimore-Washington Air Cargo Administration testified in support of the designation of Baltimore as a

wildlife port of entry. Written comments were presented at the hearing by representatives from the Maryland Forum for Animals, Action against Vivisection, Defenders of Wildlife and the Environmental Investigation Agency. These organizations opposed the designation of Baltimore basing their opposition primarily on the grounds that the designation of Baltimore would drain the time and resources available for current enforcement of wildlife laws.

A total of fifteen additional written comments were received by the Service outside of the hearings during the public comment period. Six of the comments opposed the designation of Baltimore as a port of entry, seven supported designation, one recommended the designation of Hampton Roads, Virginia and one recommended the forwarding of wildlife shipments from Norforlk, VA to Baltimore, MD for inspection determination by the Service.

The theme most common to the organizations opposed to the designation of Baltimore was that the addition of Baltimore as a port of entry "will dilute the distribution of enforcement officers and lower the inspection rate even further, potentially causing an increase in undetected wildlife trafficking" (Monitor, December 13, 1991). Other organizations expressing this point of view were the New York Zoological Society, Traffic USA, the World Wildlife Fund, and the International Council for Bird Preservation. In written comments from the Virginia Port Authority, the need for the designation of Baltimore was described as one based on anecdotal evidence.

Written comments favoring the designation of Baltimore as a port of entry alluded primarily to the costs of freight forwarding to other designated ports of entry, projected growth rates in the Baltimore-Washington area and the avoidance of inspection delays. The National Aquarium in Baltimore stated that the designation of Baltimore would facilitate the timely handling and safe transportation of marine specimens involved in various conservation programs affecting endangered species from around the world.

The Service has neither diluted other wildlife enforcement efforts nor reduced detection of illegal shipments elsewhere by the placement of a wildlife inspector at Baltimore. In fact, the placement of a trial wildlife inspection program at Baltimore confirmed what had been observed previously, that significant amounts of undetected wildlife shipments were passing through Baltimore. It also became evident that a need existed to address the legitmate interests of commercial enterprises in a burgeoning metropolitan area, which according to Maryland Port Authority statistics, comprises the fourth largest consolidated market in the United States.

The Service had previously placed a wildlife inspector at the Port of Hampton Roads, Virginia, for several months in an effort to assess the volume of wildlife products imported there. After a review of the workload carried at that location and at Baltimore, it became clear that the volume of both legal and illegal wildlife traffic at Baltimore merited the placement of a wildlife inspector at Baltimore rather than at Hampton Roads. Merely forwarding Baltimore shipments to the designated port of New York would not increase physical inspection rates, eliminate illegal wildlife shipments, or address the legitimate economic hardship needs of commercial enterprises attempting to operate in compliance with Service regulations.

The Service also receives requests for wildlife identification assistance from other Federal Agencies such as U.S. Customs, at Baltimore Washington Airport, National Airport, and Dulles Airport. While these locations are not part of the designated port area, it is important for wildlife inspection services to be available at such major international facilities when the need arises. This also relieves the burden of Service Special Agents in the Chesapeake Bay area who must take time from other investigational priorities to address inspection needs. This is particularly important during the migratory bird hunting season as waterfowl resource protection in the regional flyway is a priority.

Note: The Department of Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The only effect of this rule will be to make it easier for business to import and export wildlife directly through Baltimore, Maryland. This rule does not contain any information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These changes in the regulations in part 14 are regulatory and enforcement actions which are covered by a categorical exclusion form the National Environmental Policy Act procedures under 516 DM 6, appendix 1, sections 1.4(A)(1) and 1.5.

Author

The primary author of this rule is Special Agent Marcia Cronan, Divison of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects in 50 CFR Part 14

Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, title 50, chapter I, subchapter B of the Code of Federal Regulations is amended as set forth below.

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for part 14 continues to read as follows:

Authority: 18 U.S.C. 42; 16 U.S.C. 3371–3378; 16 U.S.C. 1538(d)–(f), 1540(f); 16 U.S.C. 1382; 16 U.S.C. 704, 712; 31 U.S.C. 483(a); 16 U.S.C. 4223–4244.

2. Section 14.12(i) is amended by removing the word "and".

3. Section 14.12(j) is amended by removing the period and adding in its place "; and".

4. Section 14.12 is amended by adding new paragraph (k) to read as follows:

§ 14.12 Designated ports.

* * * * *

(k) Baltimore, Maryland.

Dated: April 17, 1992.

Richard N. Smith,

Acting Director.

[FR Doc. 92–11750 Filed 5–19–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 920382–2082]

Groundfish of the Bering Sea and Aleutian Islands Areas; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim rule, technical amendment.

SUMMARY: The document makes technical amendments to an emergency interim rule implementing prohibited species bycatch management measures for the groundfish fishery of the Bering Sea and Aleutian Island Area (BSAI) and for the groundfish fishery of the Gulf of Alaska (GOA), which were published April 3 1992 (57 FR 11433).

These technical amendments correct drafting errors in the regulatory text and are consistent with the goals and objectives of the emergency rule.

EFFECTIVE DATES: May 20, 1992 through July 2, 1992.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: An emergency interim rule published April 3, 1992 (57 FR 11433), implemented prohibited species bycatch management measures for the Alaska groundfish trawl fisheries. A correction to the emergency rule was published on April 22, 1992 (57 FR 14667). However, the emergency rule contains two additional errors that may prove to be misleading and are in need of correction.

The first error pertains to the directed fishing standard for GOA rockfish at § 672.20(g)(5). As published, the directed fishing standard applies to all rockfish species of the genera *Sebastes* and *Sebastolobus*. This is an inoperable standard because at any one time some rockfish fisheries may be open while others are closed. The intent of the emergency rule was to establish retained bycatch allowances of rockfish species for which a directed fishing closure applies, relative to other fish species retained, including other rockfish species for which directed fisheries are open. This technical amendment corrects the directed fishing standard for GOA rockfish to make it consistent with the original intent of the emergency rule.

The second error is found at § 675.21(h), which authorizes the closure of a BSAI area fishery category when a prohibited species bycatch allowance apportioned to that category is reached. As published, this closure authority inadvertently omitted regulatory reference to "directed fishery closures." Therefore, it is not clear from the regulatory text that closures under the emergency rule are to be directed fishing closures for aggregate target species within a fishery category. The intent of the emergency rule was that, if U.S. vessels participating in the rock sole/"other flatfish" fishery take the secondary halibut bycatch allowance for that fishery, the Secretary of Commerce will publish a notice in the **Federal Register** under § 675.21(h)(1)(iv) prohibiting directed fishing for rock sole and "other flatfish" in the aggregate. The default, or "other," directed fishing standard currently at § 675.20(h)(8) applies to such closures so that retained amounts of these aggregate target species, in round weight equivalents, must be less than 20 percent of the round weight equivalent of other species retained at any time during the same trip.

Reference to directed fishing closures exists in suspended regulations at § 675.21(c). The omission of the reference to directed fishing closures in the subject emergency rule was an editorial oversight and must be included in the emergency rule to allow for enforcement of fishery closures as intended.

Classification

Because these technical amendments make only minor, non-substantive corrections to existing rules, notice and public procedure thereon and a delay in effective date would serve no purpose. Accordingly, under 5 U.S.C. 553(b) (B) & (d), notice and public procedure thereon and a delay in effective date are unnecessary.

Because this rule is being issued without prior comment, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

This rule makes minor technical changes to a rule that has been determined not to be a major rule under E.O. 12291, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. There is no change in the regulatory impacts previously reviewed and analyzed.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: May 14, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

Accordingly, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.20, paragraph (g)(5), which is effective from March 30, 1992, through July 2, 1992, is revised to read as follows:

§ 672.20 General limitations.

* * * * *

(g) * * *

(5) *Using trawl gear for rockfish of the genera Sebastes and Sebastolobus.* The operator of a vessel is engaged in directed fishing for rockfish if he retains at any time during a trip an aggregate amount of rockfish species of the genera *Sebastes* and *Sebastolobus* for which directed fishing closures apply, in an amount equal to or greater than 15 percent of the aggregate amount of deep water flatfish, flathead sole, sablefish, and other rockfish species for which directed fisheries are open, retained at the same time on the vessel during the same trip; plus 5 percent of the total amount of other fish species retained at the same time on the vessel during the same trip.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.21, paragraphs (h)(1) and (h)(2), which are effective from March 30, 1992, through July 2, 1992, are revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(h) * * *

(1) *Attainment of a trawl bycatch allowance for red king crab, C. bairdi Tanner crab, or Pacific halibut.*

(i) *Zone 1 red king crab or C. bairdi Tanner crab bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (g)(4)(ii)–(vi) of this section will catch the Zone 1 bycatch allowance, or seasonal allowances thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraphs (g)(1)–(3) of this section, the Secretary will publish a notice in the **Federal Register** closing Zone 1 to directed fishing for aggregate target species within that fishery category, except that when a bycatch allowance, or seasonal allowance thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(ii) *Zone 2 red king crab or C. bairdi crab bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (g)(4)(ii)–

(vi) of this section will catch the Zone 2 bycatch allowance, or seasonal allowances thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraphs (g)(1)–(3) of this section, the Secretary will publish a notice in the **Federal Register** closing Zone 2 to directed fishing for aggregate target species within that fishery category, except that when a bycatch allowance, or seasonal allowance thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(iii) *Primary halibut bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (g)(4)(ii)–(vi) of this section in the Bering Sea and Aleutian Islands Management Area will catch the primary halibut bycatch allowance, or seasonal allowances thereof, specified for that fishery category under paragraphs (g)(1)–(3) of this section, the Secretary will publish a notice in the **Federal Register** closing Zones 1 and 2H to directed fishing for aggregate target species within that fishery category, except that when a bycatch allowance, or seasonal allowance thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(iv) *Secondary halibut bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (g)(4)(ii)–(vi) of this section in the Bering Sea and Aleutian Islands Management Area will catch the secondary halibut bycatch allowance, or seasonal allowances thereof, specified for that fishery category under paragraphs (g)(1)–(3) of this section, the Secretary will publish a notice in the **Federal Register** closing the entire Bering Sea and Aleutian Islands Management Area to directed fishing for aggregate target species within that fishery category, except that when a bycatch allowance, or seasonal allowance thereof, specified for pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

(2) *Attainment of a trawl bycatch allowance for Pacific herring.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (g)(4)(i)–(vi) of this section in the Bering Sea and Aleutian Islands Management Area will catch the herring bycatch allowance, or seasonal allowances thereof, specified for that fishery category under paragraphs (g)(1)–(3) of this section, the Secretary will publish a notice in the **Federal Register** closing the Herring Savings Areas to directed fishing for aggregate target species within that fishery category, except that:

(i) When the midwater pollock fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, the Herring Savings Areas are closed to directed fishing for pollock with trawl gear; and

(ii) When the pollock/Atka mackerel/"other species" fishery category reaches its specified bycatch allowance, or seasonal apportionment thereof, the Herring Savings Areas are closed only for directed fishing for pollock to trawl vessels using non-pelagic trawl gear.

* * * * *

[FR Doc. 92–11788 Filed 5–19–92; 8:45 am]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 98
Wednesday, May 20, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN-91-010]

Grade Standards for American Upland Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to revise the classification of cotton to provide for the separation of grade into its chief components of color and leaf. The Secretary's Advisory Committee on Cotton Marketing, composed of all segments of the U.S. cotton industry, has recommended that the two major components of grade be determined and recorded separately, beginning with the 1993 crop. Each component would then stand clearly on its own so that its effect on end use value or processing capability could be fully and separately evaluated. The separation of grade into color and leaf will require no change in the fifteen (15) physical standards for American Upland cotton as currently maintained by USDA. This proposal would eliminate the descriptive standards for Light Gray, Gray, and Plus grades which will no longer be needed to describe special color and leaf combinations. Also, for the same reason, the averaging rule will no longer be needed. The proposals would enhance the Agency's ability to provide useful and cost-effective classification, standardization and market news services.

DATES: Comments must be received on or before June 19, 1992. The proposed changes in classification will also be considered by the Advisory Committee on Universal Cotton Standards which will be meeting during the Universal Cotton Standards Conference to be held in Memphis, Tennessee, June 11 and 12, 1992.

ADDRESSES: Written comments may be sent to the Director, Cotton Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090. Comments received will be available for public inspection during regular business hours at the above office in room 2641 South Building, 14th & Independence Avenue, SW., Washington, DC. The standards will be available for inspection and review at the AMS Cotton Division office, 4841 Summer Avenue, Memphis, Tennessee, 38122.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, (202) 720-3193.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the Order.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator of AMS has certified that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The proposed changes do not impose any significant additional costs or duties upon users of the service or any other segment of the cotton industry and therefore would not have the requisite economic impact. Further, the standards are applied equally to all size entities by employees of the Department.

Pursuant to the United States Cotton Standards Act (7 U.S.C. 51 et seq.), any standard or change or replacement to the standards shall become effective not less than one year after the date promulgated. It is anticipated that the changes, if adopted, would be implemented to coincide with the beginning of the 1993 crop year.

Background

Pursuant to the authority contained in the United States Cotton Standards Act, the Secretary of Agriculture maintains official cotton standards of the United States for the grades of American Upland cotton. These standards are used for the classification of American Upland cotton and provide a basis for the determination of value for commercial purposes.

The existing official cotton standards for the grades of American Upland cotton are listed and described in the regulations at (7 CFR 28.402-28.475). There are 15 physical standards represented by practical forms, and 29 descriptive standards for which practical forms are not made. Six of the descriptive standards describe the poorest quality cotton which make up the Below Grade classification (7 CFR 28.475).

The first grade standards for American Upland cotton were formally promulgated by USDA in 1914. They have been revised several times since, mainly because of changing varietal characteristics and harvesting and ginning practices. The last complete revision of the standards was published in the **Federal Register** of June 25, 1986 (51 FR 23037), and became effective in 1987.

Need for Revising Standards

The Secretary's Advisory Committee on Cotton Marketing has recommended that the two major components of grade—color and leaf—be determined and recorded separately, beginning with the 1993 crop. Each component would then stand clearly on its own so that its effect on end use value or processing capability could be fully and separately evaluated. Manufacturers would be able to decide the utility value of each, and could send clear signals to producers by means of premiums and discounts.

The current grading system combines color and trash into composite grades, complicating the individual evaluation of these components. the separation of the composite grade into its chief components of color and leaf would enhance USDA's ability to provide useful and cost-effective cotton classification, standardization, and market news services.

Proposed Revisions

The existing official cotton standards for the grades of American Upland cotton listed and described in the regulations at (7 CFR 28.402-28.480) would be revoked.

There would be established 30 official cotton standards for color grades of American Upland cotton. Of these 30 standards, 15 would be physical standards represented by practical forms and 15 would be descriptive standards for which practical forms are not made. Five of the descriptive standards would describe the poorest quality cotton which make up the Below Color Grade classification. The 15 physical standards for color grades would each have the same color ranges as currently maintained in the corresponding physical standards for the grades of American Upland Cotton for Good Middling, Strict Middling, Middling, Strict Low Middling, Low Middling, Strict Good Ordinary, Good Ordinary, Strict Middling Spotted, Middling Spotted, Strict Low Middling Spotted, Low Middling Spotted, Strict Good Ordinary Spotted, Middling Tinged, Strict Low Middling Tinged, and Low Middling Tinged described at 7 CFR 28.402, 28.403, 28.405, 28.407, 28.409, 28.411, 28.413, 28.431, 28.432, 28.433, 28.434, 28.435, 28.442, 28.443, and 28.444. Ten of the descriptive color standards for which practical forms would not be made would each have the same color ranges as currently described in the standards for the grades of American Upland cotton for Good Middling Light Spotted, Strict Middling Light Spotted, Middling Light Spotted, Strict Low Middling Light Spotted, Low Middling Light Spotted, Strict Good Ordinary Light Spotted, Good Middling Spotted, Strict Middling Tinged, Strict Middling Yellow Stained, and Middling Yellow Stained described at 7 CFR 28.420, 28.421, 28.422, 28.423, 28.424, 28.425, 28.430, 28.441, 28.451, and 28.452. The remaining five descriptive color standards for which practical forms would not be made describe the poorest quality cotton and make up the Below Color Grade Standards. These below color grade standards are Below Good Ordinary Color, Below Strict Good Ordinary Light Spotted Color, Below Strict Good Ordinary Spotted Color, Below Low Middling Tinged Color, and Below Middling Yellow Stained Color.

There would be established eight official cotton standards for leaf grades of American Upland cotton. Of these, seven would be physical standards represented by practical forms and one would be a descriptive standard to describe the poorest quality cotton for which practical forms would not be made. These seven physical standards for leaf grades would each have the same leaf content ranges as currently maintained in the corresponding physical standards for the white grades of American Upland Cotton for Good Middling, Strict Middling, Middling, Strict Low Middling, Low Middling, Strict Good Ordinary, and Good Ordinary described at 7 CFR 28.402, 28.403, 28.405, 28.407, 28.409, 28.411, and 28.413. The descriptive Below Leaf Grade Standard would be described as containing more leaf than Leaf Grade Standard 7.

For practical considerations the white color standards and the leaf standards shall be represented by the same set of samples. There would be one container for the Good Middling color that has leaf content of Leaf Grade 1, one container for Strict Middling color that has Leaf Grade 2, one container for Middling color that has Leaf Grade 3, one container for Strict Low Middling color that has Leaf Grade 4, one container for Low Middling color that has Leaf Grade 5, one container for Strict Good Ordinary color that has Leaf Grade 6, and one container for Good Ordinary color that has Leaf Grade 7.

Additionally, the containers for the physical standards for the Spotted color and the Tinged color standards shall have leaf content equivalent to that of the corresponding white standards. There would be one container for the Strict Middling Spotted color that has Leaf Grade 2, one container for Middling Spotted color that has Leaf Grade 3, one container for Strict Low Middling Spotted color that has Leaf Grade 4, one container for Low Middling Spotted color that has Leaf Grade 5, one container for Strict Good Ordinary Spotted color that has Leaf Grade 6, one container for Middling Tinged color that has Leaf Grade 3, one container for Strict Low Middling Tinged color that has Leaf Grade 4, and one container for Low Middling Tinged color that has Leaf Grade 5.

The table of symbols and code numbers used in lieu of cotton grade names in 7 CFR 28.525 would be revised to reflect the proposed changes.

In addition, authority citations would be revised as appropriate.

List of Subjects

7 CFR Part 28

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Warehouses.

For the reasons set out in the preamble, it is proposed to amend title 7, chapter I, part 28, subpart C, of the Code of Federal Regulations as follows.

1. The Table of Contents for §§ 28.401 to 28.480 and the undesignated centerheads for those sections, as revised and added, would read as follows:

Subpart C—Standards

* * * * *

Official Cotton Standards of the United States for the Color Grade of American Upland Cotton

White Cotton

28.401 Good Middling Color
28.402 Strict Middling Color.
28.403 Middling Color.
28.404 Strict Middling Color.
28.405 Low Middling Color.
28.406 Strict Good Ordinary Color.
28.407 Good Ordinary Color.

Light Spotted Cotton

28.411 Good Middling Light Spotted Color
28.412 Strict Middling Light Spotted Color.
28.413 Middling Light Spotted Color.
28.414 Strict Low Middling Light Spotted Color.
28.415 Low Middling Light Spotted Color.
28.416 Strict Good Ordinary Light Spotted Color.

Spotted Cotton

28.421 Good Middling Spotted Color.
28.422 Strict Middling Spotted Color.
28.423 Middling Spotted Color.
28.424 Strict Low Middling Spotted Color.
28.425 Low Middling Spotted Color.
28.426 Strict Good Ordinary Spotted Color.

Tinged Cotton

28.431 Strict Middling Tinged Color
28.432 Middling Tinged Color.
28.433 Strict Low Middling Tinged Color.
28.434 Low Middling Tinged Color.

Yellow Stained Cotton

28.441 Strict Middling Yellow Stained Color.
28.442 Middling Yellow Stained Color.

Below Color Grade Cotton

28.451 Below Color Grade Cotton.

Official Cotton Standards of the United States for the Leaf Grade of American Upland Cotton

Leaf Grades

28.461 Leaf Grade 1.
28.462 Leaf Grade 2.
28.463 Leaf Grade 3.
28.464 Leaf Grade 4.
28.465 Leaf Grade 5.
28.466 Leaf Grade 6.
28.467 Leaf Grade 7.

Below Leaf Grade Cotton

28.471 Below Leaf Grade Cotton.

General

28.480 General.

* * * * *

2. The undesignated centerheading following § 28.307 would be revised to read as follows:

Official Cotton Standards of the United States for the Color Grade of American Upland Cotton

3. The authority citation for part 28, subpart C, "Official Cotton Standards of

the United States for the Color Grade of American Upland Cotton," would be revised to read as follows

Authority: Sections 28.401 to 28.451 issued under Sec. 10, 42 Stat. 1519; (7 U.S.C. 61). Interpret or apply Sec. 6, 42 Stat. 1518, as amended; (7 U.S.C. 56), unless otherwise noted.

4. Sections 28.408, 28.409, and 28.410 would be removed; § 28.401 would be added immediately following the undesignated centerheading "WHITE COTTON"; and §§ 28.402, 28.403, 28.404, 28.405, 28.406, and 28.407 would be revised to read as follows:

White Cotton

§ 28.401 Good Middling Color.

Good Middling Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Good Middling, effective July 1, 1987."

§ 28.402 Strict Middling Color.

Strict Middling Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Middling, effective July 1, 1987."

§ 28.403 Middling Color.

Middling Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Middling, effective July 1, 1987."

§ 28.404 Strict Low Middling Color.

Strict Low Middling Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Low Middling, effective July 1, 1987."

§ 28.405 Low Middling Color.

Low Middling Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Low Middling, effective July 1, 1987."

§ 28.406 Strict Good Ordinary Color.

Strict Good Ordinary Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Good Ordinary, effective July 1, 1987."

§ 28.407 Good Ordinary Color.

Good Ordinary Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Good Ordinary, effective July 1, 1987."

5. Sections 28.411, 28.412, and 28.413 would be revised; §§ 28.414, 28.415, and 28.416 would be added; and an undesignated centerhead would be added immediately preceding § 28.411 to read as follows:

Light Spotted Cotton

§ 28.411 Good Middling Light Spotted Color.

Good Middling Light Spotted Color is color which in spot or color, or both, is between Good Middling Color and Good Middling Spotted Color.

§ 28.412 Strict Middling Light Spotted Color.

Strict Middling Light Spotted Color is color which in spot or color, or both, is between Strict Middling Color and Strict Middling Spotted Color.

§ 28.413 Middling Light Spotted Color.

Middling Light Spotted Color is color which in spot or color, or both, is between Middling Color and Middling Spotted Color.

§ 28.414 Strict Low Middling Light Spotted Color.

Strict Low Middling Light Spotted Color is color which in spot or color, or both, is between Strict Low Middling Color and Strict Low Middling Spotted Color.

§ 28.415 Low Middling Light Spotted Color.

Low Middling Light Spotted Color is color which in spot or color, or both, is between Low Middling Color and Low Middling Spotted Color.

§ 28.416 Strict Good Ordinary Light Spotted Color.

Strict Good Ordinary Light Spotted Color is color which in spot or color, or both, is between Strict Good Ordinary Color and Strict Good Ordinary Spotted Color.

6. The undesignated centerheading preceding § 28.420 would be revised; § 28.420 would be removed; §§ 28.421, 28.422, 28.423, 28.424, and 28.425 would be revised; and § 28.426 would be added, to read as follows:

Spotted Cotton

§ 28.421 Good Middling Spotted Color.

Good Middling Spotted Color is color which is better than Strict Middling Spotted color.

§ 28.422 Strict Middling Spotted Color.

Strict Middling Spotted Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Middling Spotted, effective July 1, 1987."

§ 28.423 Middling Spotted Color.

Middling Spotted Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Middling Spotted, effective July 1, 1987."

§ 28.424 Strict Low Middling Spotted Color.

Strict Low Middling Spotted Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Low Middling Spotted, Effective July 1, 1987."

§ 28.425 Low Middling Spotted Color.

Low Middling Spotted Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Low Middling Spotted, effective July 1, 1987."

§ 28.426 Strict Good Ordinary Spotted Color.

Strict Good Ordinary Spotted Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Good Ordinary Spotted, effective July 1, 1987."

7. The undesignated centerhead preceding § 28.430 would be revised;

§§ 28.430 and 28.435 would be removed; §§ 28.431, 28.432, 28.433, and 28.434 would be revised to read as follows.

Tinged Cotton

§ 28.431 Strict Middling Tinged Color.

Strict Middling Tinged Color is color which is better than Middling Tinged Color.

§ 28.432 Middling Tinged Color.

Middling Tinged Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Middling Tinged, effective July 1, 1987."

§ 28.433 Strict Low Middling Tinged Color.

Strict Low Middling Tinged Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Low Middling Tinged, effective July 1, 1987."

§ 28.434 Low Middling Tinged Color.

Low Middling Tinged Color is color which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Low Middling Tinged, effective July 1, 1987."

8. The undesignated centerthead preceding § 28.441 would be revised; §§ 28.441 and 28.442 would be revised; and §§ 28.443 and 28.444 would be removed, to read as follows:

Yellow Stained Cotton

§ 28.441 Strict Middling Yellow Stained Color.

Strict Middling Yellow Stained Color is color which is deeper than that of Strtict Middling Tinged Color.

§ 28.442 Middling Yellow Stained Color.

Middling Yellow Stained Color is American Upland cotton which in color is deeper than Middling Tinged Color and in preparation is Middling Tinged.

9. The undesignated centerhead preceding § 28.451 would be revised; § 28.451 would be revised; and § 28.452 would be removed, to read as follows:

Below Color Grade Cotton

§ 28.451 Below Color Grade Cotton.

Below color grade cotton is American Upland cotton which is lower in color grade than Good Ordinary, or Strict Good Ordinary Light Spotted, or Strict Good Ordinary Spotted, or Low Middling Tinged, or Middling Yellow Stained. In cotton classification, the official designation for such cotton is Below Color Grade. The term Below Good Ordinary Color, or Below Strict Good Ordinary Light Spotted Color, or Below Strict Good Ordinary Spotted Color, or Below Low Middling Tinged Color, or Below Middling Yellow Stained Color and other additional explanatory terms considered necessary to describe adequately the condition of the cotton may be entered on classification memorandums or certificates.

10. An undesignated centerheading following § 28.451 would be added to read as follows:

Official Cotton Standards of the United States for the Leaf Grade of American Upland Cotton

11. The authority citation for part 28, subpart C, "Official Cotton Standards of the United States for the Leaf Grade of American Upland Cotton," would be added, and the authority citation following § 28.482 would be removed, to read as follows:

Authority: Sections 28.461 to 28.482 issued under Sec. 10, 42 Stat. 1519; (7 U.S.C. 61). § 28.482 also issued under Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c) and 90 Stat. 1841–1846 as amended (7 U.S.C. 15b). Interpret or apply Sec. 6, 42 Stat. 1518, as amended; (7 U.S.C. 56), unless otherwise noted.

12. The undesignated centerheading immediately preceding § 28.460 would be revised; § 28.460 would be removed; §§ 28.461, 28.462, and 28.463 would be revised; and §§ 28.464, 28.465, 28.466, and 28.467 would be added to read as follows:

Leaf Grades

§ 28.461 Leaf Grade 1.

Leaf Grade 1 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Good Middling, effective July 1, 1987."

§ 28.462 Leaf Grade 2.

Leaf Grade 2 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Middling, effective July 1, 1987."

§ 28.463 Leaf Grade 3.

Leaf Grade 3 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Middling, effective July 1, 1987."

§ 28.464 Leaf Grade 4.

Leaf Grade 4 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Low Middling, effective July 1, 1987."

§ 28.465 Leaf Grade 5.

Leaf Grade 5 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Low Middling, effective July 1, 1987."

§ 28.466 Leaf Grade 6.

Leaf Grade 6 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Strict Good Ordinary, effective July 1, 1987."

§ 28.467 Leaf Grade 7.

Leaf Grade 7 is leaf which is within the range represented by a set of samples in the custody of the United States Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Upland, Good Ordinary, effective July 1, 1987."

13. The undesignated centerheading preceding § 28.470 would be revised; § 28.470 would be removed; § 28.471 would be revised; and § 28.472, § 28.473, the undesignated centerheading immediately preceding § 28.475, and §28.475 are removed, to read as follows:

Below Leaf Grade Cotton

§ 28.471 Below Leaf Grade Cotton.

Below leaf grade cotton is American Upland cotton which is lower in leaf

grade than Leaf Grade 7. In cotton classification, the official designation for such cotton is Below Leaf Grade. Other additional explanatory terms considered necessary to describe adequately the condition of the cotton may be entered on classification memorandums or certificates.

14. Section 28.480 would be revised to read as follows:

General

§ 28.480 General.

(a) American Upland cotton which in color is within the range of the color standards established in this part shall be designated according to the color standard irrespective of the leaf content. American Upland cotton which in leaf is within the leaf standards established in this part shall be designated according to the leaf standard irrespective of the color.

(b) The term preparation is used to describe the degree of smoothness or roughness with which cotton is ginned and the relative neppiness or nappiness of the ginned lint. Normal preparation for any color grade of American Upland cotton for which there is a physical color standard shall be that found in the physical color standard. Normal preparation for any color grade of American Upland cotton for which there is a descriptive color standard shall be that found in the physical standards for color used to define the descriptive color grade. Explanatory terms considered necessary to adequately describe the preparation of cotton may be entered on classification memorandums or certificates.

15. The authority citation for part 28, subpart C, "Official Cotton Standards of the United States for the Grade of American Pima Cotton," would be revised to read as follows:

Authority: Secs. 28.501 to 28.510 issued under Sec. 10, 42 Stat. 1519 (7 U.S.C. 61). Interpret or apply Sec. 6, 42 Stat. 1518, as amended (7 U.S.C. 56.)

Symbols and Code Numbers Used in Recording Cotton Classification

16. The authority citation for part 28, subpart C, "Symbols and Code Numbers Used in Recording Cotton Classification," would be added to read as follows:

Authority: Sec. 28.525 issued under Sec. 10, 42 Stat. 1519 (7 U.S.C. 56).

17. In § 28.525, paragraph (a) would be revised, paragraphs (b) and (c) would be redesignated as paragraphs (c) and (d), and a new paragraph (b) would be added to read as follows:

§ 28.525 Symbols and code numbers.

* * * * *

(a) *Symbols and Code numbers used for Color Grades of American Upland Cotton.*

Color grade	Symbol	Code No.
Good Middling	GM	11
Strict Middling	SM	21
Middling	Mid	31
Strict Low Middling	SLM	41
Low Middling	LM	51
Strict Good Ordinary	SGO	61
Good Ordinary	GO	71
Good Middling Light Spotted	GM Lt Sp.	12
Strict Middling Light Spotted	DSM Lt Sp..	22
Middling Light Spotted	Mid Lt Sp.	32
Strict Low Middling Light Spotted.	SLM Lt Sp.	42
Low Middling Light Spotted	LM Lt Sp.	52
Strict Good Ordinary Light Spotted.	SGO Lt Sp.	62
Good Middling Spotted	GM Sp.	13
Strict Middling Spotted	SM Sp.	23
Middling Spotted	Mid Sp.	33
Strict Low Middling Spotted	SLM Sp.	43
Low Middling Spotted	LM Sp.	53
Strict Good Ordinary Spotted	SGO Sp.	63
Strict Middling Tinged	SM Tg	24
Middling Tinged	Mid Tg	34
Strict Low Middling Tinged	SLM Tg	44
Low Middling Tinged	LM Tg	54
Strict Middling Yellow Stained	SM YS	25
Middling Yellow Stained	Mid YS	35
Below Grade—(Below Good Ordinary.	BG	81
Below Grade—(Below Strict Good Ordinary Light Spotted).	BG	82
Below Grade—(Below Strict Good Ordinary Spotted).	BG	83
Below Grade—(Below Low Middling Tinged).	BG	84
Below Grade—(Below Middling Yellow Stained).	BG	85

(b) Symbols and Code Numbers used for Leaf Grades of American Upland Cotton.

Leaf grade	Symbol	Code No.
Leaf Grade 1	LG1	1
Leaf Grade 2	LG2	2
Leaf Grade 3	LG3	3
Leaf Grade 4	LG4	4
Leaf Grade 5	LG5	5
Leaf Grade 6	LG6	6
Leaf Grade 7	LG7	7
Below Leaf Grade	BLG	8

* * * * *

Dated: May 12, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-11467 Filed 5-19-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Federal Aviation Administration

Federal Highway Administration

Federal Transit Administration

National Highway Traffic Safety Administration

Maritime Administration

Coast Guard

Research and Special Programs Administration

14 CFR Parts 61, 91, 121, 149, 153, 154, 199, 228, 235, 270, 292, 310a, 320, 326, 384, and 387

23 CFR Parts 1, 12, 17, 140, 470, 490, 642, 650, 655, 661, 666, 770, 920, and 922

33 CFR Parts 24 and 105

46 CFR Parts 154a, 237, 250, 262, 278, 279, 292, 294, 310, 316, 318, 319, 320, 321, 322, 323, 333, and 334

49 CFR Parts 81, 101, 391, 392, 396, 398, 527, 571, 590, 603, 623, 635, and 670, and Ch. III, Subchapter B

[Docket 48146; Notice 92-88; SFAR 21, 34, 44-5, 44-6, 47, 57, and 61]

RIN No. AB88

Removal of Obsolete and Redundant Regulations

AGENCY: Office of the Secretary, Federal Aviation Administration, Federal Highway Administration , Federal Transit Administration, National Highway Traffic Safety Administration, Maritime Administration, United States Coast Guard, and Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In connection with the President's Regulatory Moratorium and Review, the Department of Transportation has reviewed all is existing regulations. This review identified 71 regulations that were obsolete, redundant, or could be reissued as non-regulatory guidance. This notice proposes to remove these rules from the Code of Federal Regulations.

DATES: Comments must be received on or before July 6, 1992.

ADDRESSES: Comments should be sent to Docket Clerk, Att: Docket No. 48146, Department of Transportation, 400 7th

Street, SW., room 4107, Washington, DC, 20590. For the convenience of persons wishing to review the docket, it is requested that comments be sent in duplicate. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comment. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9 a.m. through 5:30 p.m. Monday through Friday.

FOR FURTHER INFORMATOIN CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington DC, 20590, 202–366–9306.

SUPPLEMENTARY INFORMATION: On January 28, 1992, President Bush directed all Federal agencies to review their existing regulations, in order to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy. The Department of Transportation has done so. In the course of this review, the Department identified 71 regulations that were obsolete (e.g., referred to organizations, programs, or requirements that no longer exist), redundant (e.g., duplicate other DOT regulations), or can be deleted and reissued as non-regulatory guidance. By removing these unnecessary regulations, the Department would reduce the size of its portion of the Code of Federal Regulations by 307 pages.

The Department is seeking comment on these proposed removals. Specifically, the Department requests that the public provide information on the following points:

1. Is the list complete? That is, are there other obsolete or redundant regulations that should be removed?

2. Is there a continuing use for any of the listed regulations, such that it should be retained?

The following is a list, by DOT operating administration, of the regulations the Department is proposing to remove:

Offce of the Secretary

Reinvestment of gains derived from the sale or other disposition of flight equipment (14 CFR part 235)
Criteria for designating eligible EAS points (14 CFR part 270)
Classification and exemption of Alaskan air carriers (14 CFR part 292)
Cross-reference to Privacy Act of Aviation Proceedings. (14 CFR part 310a)
Japanese charter authorization proceedings (14 CFR part 320)
Procedures for bumping subsidized air carriers from eligible points (14 CFR part 326)
CAB rules of internal organization (14 CFR part 384)
CAB operations during emergencies (14 CFR part 387)
Recommendations to the President under section 801 of the Federal Aviation Act (49 CFR part 81)

Federal Aviation Administration

SFAR 21, (14 CFR part 91), which provides sanctions and recordkeeping requirements for persons operating to Southern Rhodesia
SFAR 44–5, and 44–6 (14 CFR part 91), which responded to the air traffic controllers' strike in 1981
SFAR 47, (14 CFR part 91), which prescribes rules for special authorization to fly certain noise-restricted aircraft
SFAR 57, (14 CFR part 91), which barred the transport of the remains of Ferdinand Marcos from the United States to the Phillippines
SFAR 61, (14 CFR part 91), which formerly restricted certain cargo flights between the United States and Iraq or Kuwait.
SFAR 34, (14 CFR part 121), which established procedures to apply for compensation for required security measures in foreign air transportation.
Conversion to New System of flight Instructor Ratings (14 CFR 61.201(b)-(g)).
Parachute Lofts (14 CFR part 149)
Acquisition of U.S. Land for Public Airports (14 CFR part 153)
Acquisition of U.S. land for public airports under the Airport and Airway Development Act of 1970 (14 CFR part 154)
Aircraft Loan Guarantee Program (14 CFR part 199)

Federal Highway Administration

General Management (23 CFR part 1, §§ 1.4, 1.11(d), 1.31, 1.34, 1.37, and 1.38)
Single Audit Requirements (23 CFR part 12)
Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies (23 CFR part 17)
Reimbursement Vouchers (23 CFR part 140, subpart A)
Priority Primary Route Selection (23 CFR part 470, subpart C)
Special Programs: Economic Growth Center Development Highways (23 CFR part 490)
Secondary Road Plan (23 CFR part 642)
Water Supply and Sewage Treatment at Safety Rest Areas (23 CFR part 650, subpart E)
Concrete Bridge Decks (23 CFR part 650, subpart F)
Great River Road (23 CFR Part 661)
Topics (23 CFR part 655, subpart A)
Motorist Aid Systems (23 CFR part 655, subpart G)
Defense Bridges and Critical Highway Facilities (23 CFR part 666)
Air Quality, Conformity, and Priority Procedures (23 CFR part 770)
Pavement Marking Demonstration Program (23 CFR part 920)
Safer Off-System Roads Program (23 CFR part 922)
Driver Qualifications (49 CFR part 391, §§ 391.11(b) (2)–(5), (7) and (11); 391.27; 391.33; 391.35; 391.37; 391.51(b)((3)–(5), (c)(5), (d)(3), and (h)(3); and 391.69(a)
Driving of Motor Vehicles (49 CFR part 392, §§ 392.9a, 392.9b, 392.11, 392.12, 392.13, 392.15, 392.18, 392.21, 392.30, 392.31, 392.32, 392.33, 392.40, 392.41, 392.50, 392.52, 392.61, 392.62, 392.63, 392.65, and 392.69
Inspection, Repair, and Maintenance (49 CFR part 396, § 393.3(b)(4) and (b)(5).
Transportation of Migrant Workers (49 CFR part 398)
Appendix A to title 49, chapter III, subchapter B (49 CFR parts 350–399)-interpretations
Appendix C to title 49, chapter III, subchapter B (49 CFR parts 350–399)-Written Examination for Drivers
Joint FHWA/FTA air quality requirements (49 CFR part 623)
Section 5 requirements (49 CFR part 635)
Transfer commuter services (49 CFR part 670)

National Highway Traffic Safety Administration

CAFE procedures for model years 1978-1980 (49 CFR part 527)
Controls and displays (49 CFR 571.100)
Emissions inspection criteria (49 CFR part 590)

Maritime Administration

Repairs to Vessels Under Bareboat Charter (46 CFR part 237)
Participation By Vessels Built With Construction-Differential Subsidy in the Carriage of Domestic Trade (46 CFR part 250)
Minimum-wage, Minimum Manning and Reasonable Working Conditions (46 CFR part 262)
Employment in the Foreign Trade of Liquid and Dry Bulk Vessels Constructed With the Aid of Construction-Differential Subsidy (CDS) (46 CFR part 278)

Operating-Differential Subsidy for Bulk Cargo Vessels in United States Foreign Commerce with Great Lakes, Connecting Rivers, St. Lawrence River, and Gulf of St. Lawrence (46 CFR part 279)
Procedure to be followed by Operators in the Rendition to the Maritime Administration of Annual and Final Accountings (46 CFR part 292)
Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Carrying Bulk Raw and Processed Agricultural Commodities from the United States to the Union of Soviet Socialist Republics (46 CFR part 294)
Regulations for the Government of the U.S. Maritime Service (46 CFR part 310, subpart B)
Application Procedures for Agents (46 CFR part 316)
Compensation Payable to Agents, General agents and Berth Agents (46 CFR part 318)
Duties of Berth Agents and General agents (46 CFR part 319)
Certificate of Ownership and Operation for General Agency Vessels (46 CFR part 320)
Authority of General agents to Provide for American Merchant Marine Library Service (46 CFR part 321)
Applicability of Regulations of former Maritime Commission and War Shipping Administration to National Shipping Authority and allowability of expenses under service agreements with NSA (46 CFR part 322)
Maximum Brokerage Commission Applicable to NSA Vessels (46 CFR part 323)
Authority and Responsibility of General agents to Decommission Tankers to be Withdrawn from Operation and Placed in the Reserve Fleet (46 CFR part 333)
Radar Observer Certificates, Ship's Safety and Use of Radar (46 CFR part 334)

United States Coast Guard

Nondiscrimination in Federally Assisted Programs of the United States Coast Guard—Effectuation of Title VI of the Civil Rights Act of 1964 (33 CFR part 24)
North Atlantic Passenger Routes (33 CFR part 105)
Special Interim Regulations for Issuance of Letters of Compliance to Barges and Existing Liquefied Gas Vessels (46 CFR part 154a)

Research and Special Programs Administration

Embargoes on Property (14 CFR part 228)
Cargo Security Advisory Standards (49 CFR part 101)

Federal Transit Administration

Federal Claims Collection Act (49 CFR part 603)

Regulatory Analyses and Notices

This proposed rule is not major under the terms of Executive Order 12291 or significant under the Department of Transportation's Regulatory Policies and Procedures. It does not impose costs on anyone, and a regulatory evaluation is not needed. There are no Federalism impacts. The Department certifies that the proposal, if adopted, would not have a significant economic effect on a substantial number of small entities.

Issued this 30th day of April, 1992, at Washington, DC.

Andrew H. Card, Jr.

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation proposes to take the following actions:

1. The authority for the proposed action is 49 CFR part 322.

1a. The authority for 14 CFR part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449; Jan 12, 1983).

1b. The authority for 23 CFR part 1 continues to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 1.48(b).

1c. The authority for 23 CFR part 140 continues to read as follows:

Authority: 23 U.S.C. 101(e), 114(a), 120, 121, 122 and 315; and 49 CFR 1.48(b).

1d. The authority for 23 CFR part 470A continues to read as follows:

Authority: 23 U.S.C. 103(b)(2), 103(c)(2), 103(d)(2), 103(e)(1), 103(e)(3), 103(f), and 315; 49 CFR 1.48(b)(2) and (b)(35), unless otherwise noted.

1e. The authority for 23 CFR part 470C continues to read as follows:

Authority: 23 U.S.C. 147 and 315; 49 CFR 1.48(b) (28) and (35).

1f. The authority for 23 CFR part 650 continues to read as follows:

Authority: 23 U.S.C. 109(a) and (h), 144, 151, 351, 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988-Floodplain Management, May 24, 1977 (42 FR 26951); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); sec. 161 of Public Law 97-424, 96 Stat. 2097, 3135; Public Law 97-134, 95 Stat. 1699; and 33 U.S.C. 401 491 et seq. 511 et seq.

1g. The authority for 23 CFR part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 48 CFR 1.48(b).

1h. The authority for 46 CFR part 310 continues to read as follows:

Authority: Public Law 85-672, 72 Stat. 622 (46 U.S.C. 1381-1388) and Public Law 96-453, 94 Stat. 1997; Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Public Law 91-469 (84 Stat. 1036); Dept. of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

1i. The authority for 49 CFR part 391 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

1j. The authority for 49 CFR part 392 continues to read as folllows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

1k. The authority for 49 CFR part 396 continues to read as follows:

Authority: Section 210 of Public Law 98-554, October 30, 1984, 98 Stat. 2839 (49 U.S.C. App. 2509); 49 U.S.C. 3102; 49 CFR 1.48.

1l. The authority for 49 CFR part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

Title 14

PARTS 61, 91, 121—[AMENDED]

PARTS 149, 153, 154, 199, 228, 270, 292, 310a, 320, 326, 384, 387 and SUBCHAPTER O—[REMOVED]

2. In title 14 of the Code of Federal Regulations, remove parts 149, 153, 154, 199, (and subchapter O), 228, 235, 270, 292, 310a, 320, 326, 384, and 387; paragraphs 61.201(b)-(g) and the designation for paragraph (a) in part 61; and Special Federal Aviation Regulations 21, 44-5, 44-6, 6, 47, 57 and 61 in 14 CFR part 91 and Special Federal Aviation Regulation 34 in 14 CFR part 121.

Title 23

PARTS 12, 17, 490, 642, 661, 666, 770, 920, 922—[REMOVED]

PARTS 1, 140, 470, 650, 655—[AMENDED]

3. In title 23 of the Code of Federal Regulations, remove and reserve subpart A of part 140, subpart C of part 470, subparts E and F of part 650, subpart A and G of part 655, and remove parts 12, 17, 490, 642, 661, 666, 770, 920, and 922.

§§ 1.4, 1.31, 1.34, 1.37, 1.38 [Removed and Reserved]

§ 1.11 [Amended]

4. In title 23 of the Code of Federal Regulations, in part 1, removed §§ 1.4,

1.31, 1.34, 1.37, and 1.38, and remove and reserve § 1.11(d).

Title 33

PARTS 24, 105—[REMOVED]

5. In title 33 of the Code of Federal Regulations, remove parts 24 and 105.

Title 46

PART 310—[AMENDED]

PARTS 154a, 237, 250, 262, 278, 279, 292, 294, 316, 318, 319, 310, 321, 322, 323, 333, 334—[REMOVED]

6. In title 46 of the Code of Federal Regulations, remove parts 154a, 237, 250, 262, 278, 279, 292, 294, 316, 318, 319, 320, 321, 322, 323, 333, and 334, and remove and reserve subpart B of part 310.

Title 49

PARTS 81, 101, 398, 527, 590, 603, 635, 670—[REMOVED]

PARTS 391, 392, 396, 571—[AMENDED]

CHAPTER I, SUBCHAPTER A—[REMOVED AND RESERVED]

CHAPTER III, APPENDICES A, B, C—[REMOVED AND RESERVED]

7. In title 49 of the Code of Federal Regulations, remove parts 81, 101, 398, 527, 590, 603, 635, and 670, and remove and reserve subchapter A of chapter I.

8. In 49 CFR chapter III, remove and reserve appendices A and C to subchapter B.

9. In title 49 of the Code of Federal Regulations, remove and reserve the following paragraphs of part 391: §§ 391.11(b)(2)–(5), (7) and (11); 391.51(b)((3)–(5), (c)(5), (d)(3), and (h)(3); and 391.69(a); and remove §§ 391.27, 391.33, 391.35, and 391.37.

10. In title 49 of the Code of Federal Regulations, remove the following sections of part 392: §§ 392.9a; 392.9b, 392.11; 392.12; 392.13; 392.15; 392.18; 392.21, 392.30, 392.31, 392.32, 392.33, 392.40, 392.41, 392.50, 392.52, 392.61, 392.62, 392.63, 392.65, and 392.69, and reserve subpart D.

11. In title 49 of the Code of Federal Regulations, remove and reserve the following paragraphs of part 396: §§ 396.3(b)(4) and 396.3(b)(5).

12. In title 49 of the Code of Federal Regulations, part 571, remove § 571.100.

[FR Doc. 92-11181 Filed 5-19-92; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Department of the Army Pamphlet 25-51]

Army Privacy Program

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule.

SUMMARY: On November 21, 1990, (55 FR 48671) the Department of the Army amended its system idetification numbers in accordance with the Modern Army Recordkkeeping System (MARKS). The amendments will reflect those changes to the record system identification numbers published in the Federal Register on November 21, 1990 (55 FR 48671).

DATES: Comments must be received by June 19, 1992, to be considered by the agency.

ADDRESSES: Send comments to Department of the Army, Directorate for Policy (SAIS-PDD), The Pentagon, Room 1C710, Washington, DC 20310- 0107.

FOR FURTHER INFORMATION CONTACT: Mr. William Walker at (703) 697-1278.

SUPPLEMENTARY INFORMATION:

Executive Order 12291. The Director, Administration and Management has determined that this proposed rule is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act of 1980. The Director, Administration and Management certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act. The Director, Administration and Management certifies that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

The Department of the Army is amending sections of 32 CFR part 505 in accordance with the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The Department of the Army procedural and exemption rules are found at 32 CFR part 505.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, the Department of the Army amends 32 CFR part 505 as follows:

1. The authority citation for 32 CFR part 505 is revised to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 505.5 is amended by revising paragraph (d); and paragraphs (e)a.(1); b.(1); c.(1); d.(1); e.(1); f.(1); g.(1); h.(1); i.(1); removing and reserving j.; revising k.(1); l.(1); m.(1); n.(1); o.(1); p.(1); q.(1); r.(1); removing and reserving s.; revising t.(1); u.(1); removing and reserving v.; revising w.(1); x.(1); y.(1); z.(1); aa.(1); redesignating "ab.3.(1)" as "ab.(1)" and revising redesignated ab.(1); redesignating "ac.4.(1)"; as "ac.(1)" and revising redesignated ac.(1); revising ad.(1); ae.(1); af.(1); ag.(1); ah.(1); ai.(1); aj.(1); and ak.(1) as follows:

§ 505.5 Exemptions.

* * * * *

(d) *Procedures.* When a system manager seeks an exemption for a system of records, the following information will be furnished to the Director of Information Systems for Command, Control, Communications and Computers (SAIS-PDD), Washington, DC 20310- 0107: applicable system notice, exemptions sought, and justification. After appropriate staffing and approval by the Secretary of the Army, a proposed rule will be published in the **Federal Register**, followed, by a final rule 30 days later. No exemption may be invoked until these steps have been completed.

* * * * *

(e) *Exempt Army records.* The following records are exempt from certain parts of the Privacy Act:

a. System identification: A0020-1aSAIG.

(1) System name: Inspector General Investigative Files.

* * * * *

b. System identification: A0020-1bSAIG.

(1) System name: Inspector General Action Request/Complaint Files.

* * * * *

c. System identification: A0025-55SAIS.

(1) System name: Request for Information Files.

* * * * *

d. System identification: A0027-1DAJA.

(1) System name: General Legal Files.

* * * * *

e. System identification: A0027–10aDAJA.
(1) System name: Prosecutorial Files.
* * * * *
f. System identification: A0027–10bDAJA.
(1) System name: Courts-Martial Files.
* * * * *
g. System identification: A0190–5DAMO.
(1) System name: Vehicle Registration System (VRS).
* * * * *
h. System identification: A0190–9DAMO.
(1) System name: Absentee Case Files.
* * * * *
i. System identification: A0190–14DAMO.
(1) System name: Registration and Permit Files.
* * * * *
j. [Reserved]
k. System identification: A0190–30DAMO.
(1) System name: Military Police Investigator Certification Files.
* * * * *
l. System identification: A0190–40DAMO.
(1) System name: Serious Incident Reporting Files.
* * * * *
m. System identification: A0190–45DAMO.
(1) System name: Offense Reporting System (ORS).
* * * * *
n. System identification: A0190–47DAMO.
(1) System name: Correctional Reporting System (CRS).
* * * * *
o. System identification: A0195–2USACIDC.
(1) System name: Criminal Investigation and Crime Laboratory Files.
* * * * *
p. System identification: A0195–2aUSACIDC.
(1) System name: Source Register.
* * * * *
q. System identification: A0195b6USACIDC.
(1) System name: Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files.
* * * * *
r. System identification: A0210–7DAMO.
(1) System name: Expelled or Barred Person Files.
* * * * *
s. [Reserved]
t. System identification: A0340JDMSS.
(1) System name: HQDA Correspondence and Control/Central File System.
* * * * *
u. System identification: A0340–21SAIS.
(1) System name: Privacy Case Files.
* * * * *
v. [Reserved]
w. System identification: A0350–37TRADOC.
(1) System name: Skill Qualification Test (SQT).
* * * * *
x. System identification: A0351–12DAPE.
(1) System name: Applicants/Students, USMA Prep School.
* * * * *
y. System identification: A0351–17aTAPC–USMA.
(1) System name: U.S. Military Academy Candidate Files.
* * * * *
z. System identification: A0351–17bTAPC–USMA.
(1) System name: U.S. Military Academy Personnel Cadet Records.
* * * * *
aa. System identification: A0380–13DAMO.
(1) System name: Local Criminal Intelligence Files.
* * * * *
ab. System identification: A0380–67DAMI.
(1) System name: Personnel Security Clearance Information Files.
* * * * *
ac. System identification: A0381–45aDAMI.
(1) System name: USAINSCOM Investigative Files System.
* * * * *
ad. System identification: A0381–45bDAMI.
(1) System name: Department of the Army Operational Support Activities File.
* * * * *
ae. System identification: A0381–45cDAMI.
(1) System name: Counterintelligence Operations Files.
* * * * *
af. System identification: A0381–100aDAMI.
(1) System name: Intelligence Collection Files.
* * * * *
ag. System identification: A0381–100bDAMI.
(1) System name: Technical Surveillance Index.
* * * * *
ah. System identification: A0601–141DASG.
(1) System name: Army Medical Procurement Applicant Files.
* * * * *
ai. System identification: A0601–210aUSAREC.
(1) System name: Enlisted Eligibility Files.
* * * * *
aj. System identification: A0601–222USMEPCOM.
(1) System name: ASVAB Student Test Scoring and Reporting System.
* * * * *
ak. System identification: A0608–18DASG.
(1) System name: Family Advocacy Case Management.
* * * * *

Dated: May 8, 1992.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–11625 Filed 5–19–92; 8:45 am]
BILLING CODE 3810–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Huntington 92–02]

Safety Zone; Ohio River, Mile 310.0 — 311.0

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a safety zone between mile 310.0 and 311.0 of the Ohio River. This safety zone will be needed to protect waterborne traffic from a potential hazard associated with an attempt by a stuntman to launch a motorcycle from a ramp on the Ohio bank across the Ohio River at mile 310.5 to a barge on the West Virginia bank. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Marine Safety Office Huntington, WV.

DATES: Comments must be received on or before June 19, 1992.

ADDRESSES: Comments should be mailed to Commanding Officer, USCG Marine Safety Office, 1415 6th Avenue, Huntington, WV, 25701–2420, Attention: Docket COTP Huntington 92–02. The comments and other materials referenced in this notice will be available for inspection and copying at the mailing address. Normal business hours are from 8 a.m. to 4 p.m., Monday through Friday, except holidays.

Comments may also be hand-delivered to the mailing address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Diane J. Hauser, Project Officer, Port Operations Department, at (304) 529–5524.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their name and address, identify this notice [COTP Huntington 92–02] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if the comment requests acknowledgement.

The proposed regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held if sufficient written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafter of this notice is Lieutenant Junior Grade Diane J. Hauser, Project Officer for the Captain of the Port, Huntington, WV.

Discussion of Proposed Regulations

The circumstances requiring this proposed regulation results from the potential hazards associated with an attempt by a stuntman to launch a motorcycle from a ramp on the Ohio bank across the Ohio River at mile 310.5 to a barge on the West Virginia bank. This regulation will be issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Economic Assessment and Certification

The proposed regulation has been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, this regulation is considered to be nonsignificant under the guidelines of DOT Order 2100.5 dated May 22, 1980, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of these regulations is expected to be minimal. The above conclusions follow from the fact that the safety zone being created by this action is of extremely limited duration, lasting at most 4 hours. Pursuant to 5 U.S.C. 1601 et seq., Regulatory Flexibility Act, it is certified that these regulations will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment and Certification

This action is being reviewed by the Coast Guard. Preliminary analysis indicates this action will qualify for Categorical Exclusion in accordance with paragraph 2.B.2.c. of the NEPA Implementing Procedures, COMDTINST M16475.1B. Interested persons are nonetheless invited to participate in this rulemaking by submitting written views, data, or arguments in accordance with the procedures outlined earlier in this preamble. Copies of all documents being reviewed will be available on the docket for public review.

Federalism Assessment and Certification

This action is being analyzed in accordance with the principles and criteria outlined in Executive Order 12612, and it is expected that the proposed action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. As noted above, the safety zone proposed by this rulemaking is anticipated to be of extremely limited duration.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (waters), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 will continue to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6 and 160.5.

2. A new § 165.T0213 is added to read as follows:

§ 165.T0213 Ohio River, Mile 310.0 to 311.0—safety zone.

(a) *Location.* The following is a safety zone: The waters of the Ohio River between mile 310.0 and mile 311.0.

(b) *Effective Date.* This regulation becomes effective on 5 September 1992 at 12:30 p.m. It terminates on 5 September 1992 at 4:30 p.m., unless sooner terminated by the Captain of the Port, Huntington, WV.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Huntington, WV.

Dated: April 24, 1992.

R.P. Prince,

Commander, U.S. Coast Guard, Captain of the Port, Huntington, West Virginia.

[FR Doc. 92–11720 Filed 5–19–92; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Barcoded Rates for Automation-Compatible Flat-Size Mailpieces

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 21, 1992, the Postal Service published in the **Federal Register** (57 FR 14525–14551) a proposal to amend the Domestic Mail Manual to incorporate implementing regulations for barcoded rates for automation-compatible First-, second-, and third-class flat-size mailpieces. The Postal Service requested comments by May 21, 1992. Due to the needs of the mailing public, from who requests for additional time were received, the Postal Service is extending the comment period to June 1, 1992.

DATES: Comments on the proposed rule must be received on or before June 1, 1992.

ADDRESSES: Address all comments to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260–5903. Copies of all written comments will be available for inspection between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc 92–11751 Filed 5–19–92; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-4135-4]

National Emission Standards for Hazardous Air Pollutants Benzene Waste Operations: Correction

AGENCY: Envrionmental Protection Agency (EPA).

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking that was published on March 5, 1992 (57 FR 8017). The proposed rulemaking would clarify subpart FF of 40 CFR part 61.

EFFECTIVE DATE: May 20, 1992.

FOR FURTHER INFORMATION CONTACT: Robert B. Lucas, Office of Air Quality Planning and Standards, Chemicals and Petroleum Branch (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-0884.

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections would clarify national emission standards for hazardous air pollutants for benzene emissions from benzene waste operations, subpart FF of 40 CFR part 61. Sources affected by subpart FF include chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by chemical manufacturing plants, coke by-product recovery plants, or petroleum refineries.

Need for Correction

As published, the notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on March 5, 1992 of the notice of proposed rulemaking that was the subject of FR Doc. 92-4769 is corrected as follows:

1. The fourth full paragraph in the second column on page 8026 that reads, "These mitigating actions should consider, in the following order of highest lowest priority, additional benzene emission reductions from benzene waste operations not otherwise required under this rule, benzene emissions reductions from sources other than benzene waste operations, emission reductions of air pollutants other than benzene, reductions in pollutants transferred to media other than air (such as groundwater or surface water), or nonquantifiable benefits." is revised to read as follows:

"These mitigating actions should consider, in the following order of highest to lowest priority, additional benezene emission reductions from benzene waste operations not otherwise required under this rule, benzene emission reductions from sources other than benzene waste operations, emission reductions of air pollutants other than benzene reductions in pollutants transferred to media other than air (such as groundwater or surface water), or nonquantifiable benefits."

§ 61.342 [Corrected]

2. On page 8028, first column, line 16, change "sumit" to "submit."

3. On page 8028, first column, line 18, change "§ 61.160(b)(3)" to "§ 61.10(b)(3)."

§ 61.349 [Corrected]

4. On page 8028, third column, paragraph (a)(2)(iv)(A) of § 61.349 is corrected to read as follows:

"(A) The device shall recover or control the organic emissions vented to it with an efficiency of 95 weight percent or greater, or shall recover or control the benzene emissions vented to it with an efficiency of 98 weight percent or greater."

§ 61.355 [Corrected]

5. On page 8030, third column, the symbols defintions after the equation in paragraph (e)(4) of § 61.355 should be amended with the following: "C_i =Average concentration of benzene in the waste stream exiting the treatment process during each run i ppmw."

6. On page 8031, second column, the defintion of symbol C_{bi} should be corrected to read as follows: "C_{bi} = Organic concentration of compound i or the benzene concentration measured in the vent stream exiting the control device as determined by Method 18, ppm by volume on a dry basis."

§ 61.356 [Corrected]

7. On page 8032, first column, the first sentence of paragraph (f)(2)(ii)(E) of § 61.356 is corrected to read as follows:

"(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. * * *"

8. On page 8032, second column, the last sentence of paragraph (j)(6) § 61.356 is corrected to read as follows:

"(8) * * * If the temperature of the condenser exhaust stream and coolant fluid is monitored, then the owner or operator shall record all 3-hour periods of operation during which the temperature of the condenser exhaust vent stream is more than 6 ° C above the design average exhaust vent stream temperature, or the temperature of the coolant fluid exiting the condenser is more than 6 ° C above the design average coolant fluid temperature at the condenser outlet."

§ 61.357 [Corrected]

9. On page 8032, third column, the amendatory language for change item number 13 is corrected to read as follows: "13. Section 61.357 is amended by revising the introductory text in paragraph (a); by revising paragraphs (a)(4), (d)(1), (d)(3)(iii), (d)(6)(iii)(D), and (d)(7); and by adding paragraph (d)(6)(iii)(J) to read as follows:"

10. On page 8033, first column, the first sentence of paragraph (d)(1) of § 61.357 is corrected to read as follows:

"(1) Within 90 days after (date of promulgation of clarifying amendments), unless a waiver of compliance under § 65.11 of this part is granted, or by the date of initial startup for a new source with an initial startup after the effective date, a certification that the equipment necessary to comply with these standards has been installed and that the required initial inspections or tests have been carried out in accordance with this subpart. * * *"

* * * * *

Dated: May 13, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-11803 Filed 5-19-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No 90-91; RM-7108; RM-7514]

Radio Broadcasting Services; Crestview and Westbay, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule

SUMMARY: This document denies a petition for rule making seeking the substitution Channel 284C1 for Channel 284C2 at Crestview, Florida (RM-7108), and denies a counterproposal filed by Tres Amigos Communications to allot Channel 282A to Westbay, Florida (RM-7514). See 55 FR 09340, March 13, 1990.

With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–91, adopted May 5, 1992, and released May 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocation Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc 92–11840 Filed 5–19–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–109, RM–7966]

Radio Broadcasting Services; Carmel Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Eric R. Hilding on behalf of Joseph and Jan Miller requesting the allotment of Channel 290A to Carmel Valley, California as that community's first local FM service. Coordinates for this proposal are North Latitude 36–20–45 and West Longitude 121–42–30.

DATES: Comments must be filed on or before July 6, 1992, and reply comments on or before July 21, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Eric R. Hilding, P.O. Box 1700, Morgan Hill, CA 95038–1700 (consultant to petitioner)

Joseph and Jan Miller, 60 Boronda Lane #24, Monterey, CA 93940, (petitioner).

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–109, adopted May 5, 1992, and released May 15, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown copy Center, (202) 452–1422, 1714 21st St., NW, Washington, DC. 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–11845 Filed 5–19–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Florida Plants of the Genus Conradina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list three plant species belonging to the genus *Conradina* (minty rosemaries) as endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. The three species are native to Florida. *Conradina glabra* (Apalachicola rosemary is restricted to dry sandy areas above ravines near the Apalachicola River west of Tallahassee in Liberty County. It is threatened by habitat modification due to forestry practices and farming. *Conradina brevifolia* (short-leaved rosemary) is restricted to dry sand soils in Florida scrub vegetation southwest of Orlando in Highlands and Polk Counties. Its habitat is being destroyed by agricultural and residential development. *Conradina etonia* (Etonia rosemary) is restricted to scrub vegetation near Etonia Creek west of Palatka, Putnam County. It is vulnerable to residential development. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by July 20, 1992. Public hearing requests must be received by July 6, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Michael M. Bentzien, Assistant Field Supervisor, at the above address (telephone: 904–791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

Conradina (minty rosemary) is a genus of minty-aromatic shrubs belonging to the mint family (Lamiaceae or Labiatae) that resemble the herb rosemary (Rosmarinus officinalis) native to the Mediterranean region. *Conradina* is characterized by dense hairs appressed or matted on the under surfaces of the leaves, and by the flower's corolla tube, which is sharply bent above the middle, rather than straight or gently curved (Shinners 1962).

The genus *Conradina* consists of six allopatric species, i.e., the ranges of the species do not overlap (Kral and McCartney 1991). The most widespread and variable species is *Conradina canescens* of the Florida panhandle, southern Alabama, and southern Mississippi. This species occurs on dry sand soils on coastal dunes, in sand scrub vegetation, and in dry longleaf pinelands. The other five species have more restricted geographic distributions and are considerably less variable (Gray 1965).

Conradina verticillata (Cumberland rosemary) is native to north-central Tennessee. It was federally listed as a

threatened species in the Federal Register of November 29, 1991 (56 FR 60937).

Conradina grandiflora (large-flowered rosemary) is native to scrub vegetation near Florida's Atlantic coast from Daytona Beach south to Miami, as well as inland near Orlando and in Okeechobee County. Despite measures to protect the federally threatened Florida scrub jay that occurs in the same scrub vegetation, habitat of *Conradina grandiflora* is being lost to development, and federal listing for *Conradina grandiflora* is probably warranted, but is not proposed at this time because other listing actions are of higher priority.

The three other species of *Conradina*, *Conradina glabra* (Apalachicola rosemary), *Conradina brevifolia* (short-leafed rosemary), and *Conradina etonia* (Etonia rosemary) are the subject of this rule.

Conradina glabra is restricted to Liberty County, Florida, west of Tallahassee near the Apalachicola River (Gray 1965; Schultz 1987, citing personal communication from Wilson Baker; and S. Gatewood, The Nature Conservancy, Tallahassee, pers. comm., 1991). Plants collected from Santa Rosa County near Milton, northeast of Pensacola (by S.C. Hood in 1949) were assigned to this species by Shinners (1962). Gray (1965) searched the Milton area for *Conradina glabra* without finding it. Later, Godfrey (1988) found plants assignable to *C. glabra* north of Milton, in Blackwater State Forest. The Blackwater Forest plants are within the geographic range of the widespread, variable *Conradina canescens*, and except for being glabrous, the Santa Rosa County plants generally resemble *Conradina canescens* more than *C. glabra*. In 1989, Elaine Luna was studying the taxonomy and distribution of *Conradina glabra*, but results are not yet available (D. White, FL Natural Areas Inventory, memo, October 1989; R. Hilsenbeck, FL Natural Areas Inventory, *in litt.*, 1991). Kral and McCartney (1991) implicitly assign the Blackwater plants to *C. canescens*. Godfrey (1988) corrects an erroneous report by Godfrey and Ward (1979) that "most collections [of *C. glabra*] have been made in or near the Apalachicola National Forest" in Franklin County, Florida. The plant does not occur in the National Forest or Franklin County.

Conradina glabra occurs in an area of several square miles near State Road 12 and County Road 271 northeast of Bristol, Liberty County. The area is a gently undulating upland, originally with longleaf pine-wiregrass vegetation, dissected by ravines of the Sweetwater Creek system, which drain westward to the Apalachicola River. Parts of the Apalachicola ravines are incorporated in public and private nature preserves that protect rich hardwood forests with the narrowly endemic Florida torreya (*Torreya taxifolia*) and Florida yew (*Taxus floridana*). Heads of ravines, called steepheads, have slopes that are undermined by groundwater seeping into the ravine bottom, causing the slopes to gradually slump, carrying the vegetation with it. At least one steephead shrub, Florida yew, appears to be adapted to slowly moving down the slopes (Redmond 1984, cited in Platt and Schwarz 1990), and *Conradina glabra* may sometimes be carried into ravines. "Many older *Conradina* shrubs occur at the edge of the ravine and even extend a short distance down into open areas of the ravine; younger *Conradina* plants have become established in the barren, exposed soil adjacent to the pines and often extend into the pine stand. This suggests that *C. glabra* is able to compete effectively in open, newly exposed areas but is unable to compete in closed stands of mixed hardwoods or pines. This species probably features significantly in secondary plant succession in the area, much of which is frequently subjected to burning." (Gray 1965). Wilson Baker (pers. comm. cited in Schultz 1987) suggested that *Conradina* spread from the ravine edges into newly planted pine plantations on the uplands during the 1950's. Kral (1983) considered *Conradina glabra* to have inhabited the grassy understory of the upland longleaf pine-wiregrass vegetation before pine plantations were developed, as well as steephead edges. Kral thought that *Conradina glabra* was increasing in slash pine plantations, along with another woody mint, *Calamintha dentata*. However, Kral thought it "premature to state that this will be a stable system" because the planted slash pine had not thrived, the plantations were probably more open than had been intended, and that if the slash pines matured, they might provide "more shade and more competition than is good for the *Conradina*". Most of the slash pine was cut in 1987 and replanted to sand pine (S. Gatewood, The Nature Conservancy, in litt., 1987). *Conradina glabra* currently "is found on road edges, in planted pine plantations and along their cleared edges, and along the edges of the ravines" (Baker, pers. comm., in Schultz 1987).

At the present time, there are four distinct natural colonies of *Conradina glabra* on land owned by a forest products company and on public road rights-of-way. A fifth, artificial colony is being created a short distance from the plant's native range, on similar ravine edges, in the Apalachicola Bluffs and Ravines Preserve, owned by The Nature Conservancy, (S. Gatewood, The Nature Conservancy, pers. comm., 1991).

Conradina glabra was named as a distinct species by Shinners (1962), a treatment that was upheld by Gray (1965). The plant had first been collected in 1931, and Small (1933, p. 1167) mentioned the specimen without assigning a name. *Conradina glabra* is a much-branched shrub up to 2 meters tall. Kral (1983) noted that it is "often clonal" and Wilson Baker (pers. comm. cited in Schultz 1987) thinks the species may spread by rhizomes. The branches are spreading or upright. The leaves are evergreen, opposite, with additional leaves in short shoots in the axils giving the appearance of fascicles. The leaves are needle-like, "very similar to the needles of fir" (Kral 1983, p 949). The leaves are hairless on the upper surface—the only species of *Conradina* for which this is the case. The flowers are usually in groups of 2 or 3. The calyx and corolla are two-lipped. The corolla is 1.5–2.0 centimeters long from its base to the tip of its longest lobe, with a slender corolla tube that is straight for about 5 mm long, then bends sharply downward to form a funnel-shaped throat 5 mm long, then widens out into upper and lower lips. The outside of the tube and throat are white, with the lobes and lips lavender blue at the tips. The lower lip of the corolla is three-lobed, with a band of purple dots extending along its inner side. The four stamens are paired. Many flowers are male sterile. In extreme cases, the stamens are "grossly malformed, being petaloid in shape, texture, and color. . . A less bizarre manifestation of male sterility is that in which only aborted pollen grains are contained in anthers that appear completely normal" (Gray 1965). Male sterility may be the result of inbreeding and homozygosity (Gray 1965). The plant is illustrated in Godfrey (1988).

Conradina brevifolia (short-leaved rosemary) inhabits sand pine scrub vegetation on the Lake Wales Ridge in Polk and Highlands Counties, Florida. Scrub vegetation on the ridge is typically dominated by evergreen scrub oaks and other shrubs, with sand pine and open areas with herbs and small shrubs. This vegetation has many endemic species, including 13 plants federally listed as endangered or threatened, the federally threatened Florida scrub jay (Aphelocoma coerulescens coerulescens), and two threatened lizards (blue-tailed mole skink and sand skink). *Conradina*

brevifolia has a very restricted geographic distribution within the Lake Wales Ridge, occurring only in about 30 scrubs whose combined areas total less than 6000 acres (Christman 1988). As such, it is one of the most narrowly distributed of the Lake Wales Ridge endemic plants. The plant is protected on Lake Arbuckle State Forest and on land currently owned by The Nature Conservancy at Saddle Blanket Lakes. This 568-acre tract is the nucleus of a planned 878-acre State acquisition. Further State, Federal, and private land purchases are contemplated in the area, including the proposed Lake Wales Ridge National Wildlife Refuge.

Conradina brevifolia was described as a new species by Shinners (1962). It is similar to *C. canescens* but has shorter leaves: the larger leaves on well-developed flowering branches are 6.0–8.2 mm long, mostly shorter than the internodes, versus 7.0–20 mm long, mostly longer than the internodes for *C. canescens*: *Conradina brevifolia* also tends to have more flowers per axil than *C. canescens:* 1 to 6 per axil versus 1 to 3. Gray (1965) made it clear that *C. brevifolia*, like *C. glabra*, is morphologically not strongly differentiated from, and is less variable than, *C. canescens*. Gray (1965), Wunderlin (1980), Kral (1983) Kral and McCartney (1991), and Wunderlin et al. (1980) have upheld *C. brevifolia* as a distinct species; Wunderlin (1982) includes *C. brevifolia* in *Conradina canescens*, without noting *C. brevifolia* as a synonym. Delaney and Wunderlin (1989) follow this practice.

Conradina etonia (Etonia rosemary) is known from only two sites near Etonia Creek, northeast of Florahome, Putnam County, northeastern Florida. It occurs in Florida scrub vegatation with sand pine, shrubby evergreen oaks. Scrub in this area is the northeastern range limit for several plant species of Florida scrub, including silk bay (*Persea humilis*,) sand holly (*Ilex cumulicola*), *Garberia heterophylla*, and the scrub palmetto (*Sabal etonia*), which is named for this area but does not occur in the immediate vicinity of *Conradina etonia* (Kral and McCartney 1991, S. Christman, Florida Dept. of Natural Resources, pers. comm., 1991). The threatened Florida scrub jay occurs in the same habitat as *Conradina etonia*. The sites where this plant is known to occur are privately owned and are subdivided for residential development, or have been approved for such development.

Conradina etonia was discovered in 1990 and promptly described as a new species (Kral and McCartney 1991). It is similar to *Conradina grandiflora* in general habit of growth, and the flowers of both species are large and quite similar in appearance. However, the leaves of *Conradina etonia* are distinctly broader than those of *C. grandiflora*, and have lateral veins that are clearly visible on the under surface, a feature that is seen in no other species of *Conradina*. The pubescence of the leaves and much of the rest of the plant is also quite different between the two species. Kral and McCartney (1991) are convinced "that *Conradina etonia* could well be the best marked species in a genus whose species differ mostly in very fine characters." They express hope that further searches of scrub vegetation in northeastern Florida may turn up more localities for *Conradina etonia* and that some intermediates between it and *C. grandiflora* might be found; they mention a specimen of *C. grandiflora* from south of Daytona Beach whose new shoots have a downiness similar to that of *C. etonia*. However, the extent of sand pine scrub suitable for *Conradina etonia* is limited and it is botanically reasonably well explored, primarily by Robert McCartney, with other visits by Steven Christman, Robert Godfrey, and Robert Kral.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. On June 16, 1976, the Service published a proposed rule (41 FR 24524) to determine some 1,700 U.S. vascular plant species recommended by the Smithsonian report to be endangered species pursuant to Section 4 of the Act. This proposal was withdrawn in 1979 (44 FR 12382). *Conradina glabra* and *Conradina brevifolia* were included in the Smithsonian report; the July 1, 1975 notice; the June 16, 1976 proposal; and the 1979 withdrawal.

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Conradina glabra* and *Conradina brevifolia* as category 1 candidates (taxa for which the Service currently has on file substantial data on biological vulnerability and threats to support proposing to list them as endangered or threatened species). A supplement to the notice of review published on November 28, 1983 (48 FR 53640) changed both species to category 2 candidates (taxa for which data in the Service's possession indicates listing is possibly appropriate); both species retained category 2 status in a notice of review published September 27, 1985 (50 FR 39526). A notice of review published February 21, 1990 (55 FR 6184) moved *Conradina glabra* back to category 1, based on new information developed by the Florida Natural Areas Inventory.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Conradina glabra* and *C. brevifolia* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1989, the Service found that the petitioned listing of these species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of the this proposal consitutes the final petition finding for both species.

Because *Conradina etonia* was described as a new species in 1991, it has not been covered by a notice of review or by the petition process, although Dr. Steven Christman (Florida Dept. Natural Resources, pers. comm., 1991) suggested emergency listing of the newly-described plant.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Conradina glabra* Shinners (Apalachicola rosemary), *Conradina brevifolia* Shinners (short-leaved rosemary), and *Conradina etonia* Kral & McCartney (Etonia rosemary) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Conradina glabra is a narrowly distributed species that was originally restricted to a specialized habitat, the edges of steephead ravines and possibly also to upland longleaf pine-wiregrass vegetation. The plant appears to require full sunlight or light shade. Planting of any kind of pine (longleaf, slash, or sand) is likely, by the time the trees are mature, to result in dense shade that could kill this species. Another possible problem in planted pine stands is that sand pine (which is currently grown in the area) does not tolerate prescribed fire, which may help keep habitat open for *Conradina glabra*. Other *Conradina* species grow in habitats with varying natural fire frequencies. Forestry practices may kill *Conradina glabra* directly: S. Gatewood (The Nature Conservancy, memorandum, 1987, provided by FNAI) reported that when most of the range of this plant was cut and site-prepared in 1987, he observed from *Conradina glabra* plants surviving on areas where chopping had not occurred, none where it had. The long-term consequences of the 1987 activity is not yet known; planting of slash pines in the area may have allowed *Conradina glabra* to spread through the plantations and onto road rights-of-way, but the site preparation methods used then were probably different from those in use today, and the slash pines never thrived well, casting less shade that can be expected of sand pines. The herbicide Velpar is sometimes used in timber regeneration areas (S. Gatewood, memorandum, May 1987), and its use could affect *Conradina glabra*. The very limited distribution of *Conradina glabra*, and management of most of that range by a single landowner exacerbates the threat to this plant from forestry practices, simply because the same management practices are likely to be applied rangewide, at the same time. Some land with *Conradina glabra* has been converted to improved pasture, destroying the plant (Kral 1983) and rendering the land uninhabitable for it.

Except for two protected sites, *Conradina brevifolia* is threatened by destruction of its central Florida scrub habitat for agricultural purposes (citrus groves and pastures) and for residential development. As explained in the background section, thirteen plant species from this habitat are federally listed (Fish and Wildlife Service 1990), and *Conradina brevifolia* is more narrowly distributed than most of the listed species. Its listing was delayed only because of uncertainty over its taxonomic status due to its treatment in Wunderlin (1982). *Conradina brevifolia* will benefit from the recovery plans that have already been prepared for these plants, from actions that are being taken to protect the threatened Florida scrub jay from take as defined by the Endangered Species Act, from planning that is underway to create a Lake Wales Ridge National Wildlife Refuge for endangered and threatened plants and animals, and from State and private land acquisition projects. If substantial conservation progress is made before a final rule is prepared, this plant could be listed as threatened rather than endangered.

Conradina etonia is threatened by residential development of its two sites, one in a subdivision where houses are being built, and the other in an area where the landowner has obtained all necessary permits to create a residential development.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is commercial trade in the genus *Conradina*, whose species have considerable horticultural potential. Rober McCartney (Woodlanders, Inc., Aiken, SC) reports that all the species of *Conradina* are easily propagated and are in cultivation (cited in U.S. Fish and Wildlife Service 1991). The Woodlanders catalog shows that the widespread, variable *Conradina canescens* is a rich source of horticultural selections, and it appears to be the species of greatest horticultural interest. Commercial trade in the rarer species should not adversely affect those species, provided that it is dependent upon plants propagated from plants in cultivation. Inappropriate collecting from plants in the wildlife is a threat to the three species proposed for listing.

C. Disease or Predation

Not applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

Conradina glabra is listed as a threatened species under the Preservation of Native Flora of Florida law (section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will provide additional protection through sections 7 and 9, recovery planning, and the Act's additional penalties for taking of plants in violation of Florida law. The Florida law provides for automatic addition of federally listed plants to the state's list as endangered species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The limited geographic distribution of each of the three *Conradina* species, the fragmentation of remaining habitat for *Conradina brevifolia* into small segments isolated from each other, and the small sizes of the two known *Conradina etonia* populations add to the threats faced by these species. The lack of morphological variation in these species compared to *Conradina canescens*, and the high incidence of male sterility in *Conradina glabra* suggest that these species are inbred, and gene pools may be limited. Limited gene pools may depress reproductive vigor, or single human-caused or natural environmental disturbances could destroy a significant percentage of the individuals of these species, especially *Conradina glabra* and *C. etonia*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose the rule. Based on this evaluation, the preferred action is to list *Conradina glabra, C. brevifolia,* and *C. etonia* as endangered species. Each of these species is likely to become extinct in a significant portion of its range within the foreseeable future, meeting the Act's requirements for listing as an endangered species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species. Except for two protected sites with *Conradina brevifolia*, all of the populations of these species are on unprotected private land where they would gain no added protection from designation of critical habitat, and where such a designation might motivate landowners to protect their property values and/or property rights by extirpating the plants. Designation of critical habitat might also attract persons wishing to collect plants for horticultural purposes, with or without the written permission of the landowner that is required by Florida law. For these reasons, it would not now be prudent to determine critical habitat for the three species of *Conradina*. The State and The Nature Conservancy are aware of the need to conserve

Conradina brevifolia on lands they own. Owners of privately owned sites for the other two species have been, or will be contacted by the Service or other conservation agencies. Protection of these species will be addressed through the recovery process and the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a federal action may affect a listed species or its critical habitat, the responsible federal agency must enter into formal consultation with the Service.

The populations of *Conradina brevifolia* on public and private conservation lands will require management of the vegetation, as part of management to benefit other endangered and threatened plant and animal species in the same habitat (Fish and Wildlife Service 1990). Land acquisition within the range of *Conradina brevifolia* is planned by the State of Florida and the Fish and Wildlife Service.

Protection of the threatened Florida scrub jay from take due to destruction of its scrub habitat may benefit *Conradina brevifolia* and *C. etonia*, both of which occur in scrub vegitation inhabited by scrub jays.

Conservation of *Conradina glabra* may require ensuring that use of herbicides in forestry or road right-of-way maintenance does not jeopardize this plant.

The Fish and Wildlife Service will prepare recovery plan(s) for all three species and encourage conservation efforts by the State, private landowners, and private conservation groups.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions for all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.16 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

Enforcement of the Endangered Species Act's trade prohibitions on *Conradina glabra* and *C. brevifolia* could be difficult because *Conradina canescens*, a widespread, secure species, sis morphologically variable, and some individuals belonging to this species may be indistinguishable from individuals belonging to *C. glabra* and *C. brevifolia*. The Endangered Species Act (section 4(e)) would allow for *Conradina canescens* to be treated as a threatened or endangered species, even though not listed as such, to facilitate enforcement of trade prohibitions, if doing so would "substantially facilitate the enforcement and further the policy of this Act" (section 4(e)(C)). However, this course of action is unnecessary because none of the species of *Conradina* is presently threatened by taking for purposes of horticultural trade. Information available to the Service indicates that *Conradina* plants in trade are of cultivated orgin.

It is anticipated that trade permits will be sought and issued because all species belonging to the genus *Conradina* are currently in commerce across state lines. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final rule resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any addition populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the ranges, distributions, and population sizes of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulation on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Jacksonville, Florida, Field Office (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared

in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Mr. David Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Lamiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*		*	
Lamiaceae—Mint family:						
*	*	*	*		*	
Conradina brevifolia	Short-leaved rosemary	U.S.A. (FL)	E		NA	NA
Conradina etonia	Etonia rosemary	U.S.A. (FL)	E		NA	NA
Conradina glabra	Apalachicola rosemary	U.S.A. (FL)	E		NA	NA
*	*	*	*		*	

Dated: May 4, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–11829 Filed 5–19–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB 75

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Cactus Leptocereus Grantianus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Leptocereus grantianus* (no common name) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. This cactus is endemic to Culebra Island, Puerto Rico. Only one population, consisting of approximately 50 individuals, is known to occur on the southwestern coast of the island. It is threatened by proposed housing developments and erosion of its shoreline habitat. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Leptocereus grantianus*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by July 20, 1992. Public hearing requests must be received by July 6, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours at this office, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297).

SUPPLEMENTARY INFORMATION:

Background

Leptocereus grantianus was discovered on the island of Culebra in

1932 by Major Chapman Grant. It was later described by Nathaniel Britton from material cultivated by Grant. The population has been much reduced in numbers and areal extent over the years, and it has also died out in cultivation (Proctor 1991).

Leptocereus grantianus is a sprawling or suberect, nearly spineless cactus which may reach up to 2 meters in height and from 3 to 5 centimeters in diameter. The elongated stems have from 3 to 5 prominent ribs with broadly scalloped edges. Ribs of young joints are thin and the small areoles may bear from 1 to 3 minute, nearly black spines which disappear as the joints grow older. The flowers are solitary at terminal areoles, from 3 to 6 centimeters long, and nocturnal. The outer perianth segments are linear, green, and tipped by an areole like those of the tube and ovary and the inner segments are numerous, cream-colored, oblong-obovate, obtuse and about 8 millimeters long. The fruit is subglobose to ellipsoid and about 4 centimeters in diameter (Britton 1933, Proctor 1991).

Leptocereus grantianus is endemic to Culebra, an island located just off the northeastern corner of Puerto Rico. On Culebra only one population, consisting of approximately 50 individuals, occurs in dry thickets along the rocky coast near Punta Melones (Proctor 1991). The island of Culebra is currently subject to intense pressure for rural, urban, as well as tourist development. Housing projects are currently proposed for the area. It is also threatened by erosion of this unstable, rocky slope.

Leptocereus grantianus was recommended for listing by Dr. George Proctor and Dr. Alain Liogier during a September 1988 meeting concerning the revision of the candidate plant species list in Puerto Rico and the U.S. Virgin Islands. It was subsequently included as a Category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the February 21, 1990 (55 FR 6184) notice of review.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Leptocereus grantianus* Britton are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Leptocereus grantianus is found on privately owned land near the town of Dewey in an area subject to intense pressure for various types of development. Currently there is a proposal for home construction in the area where the cactus occurs.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The species has been cut in the past for livestock feed. In addition, its ornamental potential may result in take becoming a problem in the future (G. Proctor, pers. comm.).

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Leptocereus grantianus* is not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence.

The most important factors affecting the continued survival of this species is its limited distribution and limited numbers. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. The steep rocky banks where the species is located are unstable and located close to the shoreline. Hurricane Hugo recently devastated Culebra and, although the impacts to this species were not documented, the passage of another hurricane might result in the elimination of this population.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Leptocereus grantianus* as endangered. Only one population consisting of 54 individuals is known to exist. Deforestation for development is an imminent threat to the survival of the species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time, as such a determination would result in no known benefit. The number of individuals of *Leptocereus grantianus* is sufficiently small that vandalism and collection could seriously affect the survival of the species. Publication of descriptions and maps required when critical habitat is designated would only increase the potential from such threats, and therefore could contribute to the species' decline. The Service believes the Federal involvement in the area where the plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal

agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Leptocereus grantianus*, as discussed above. Federal involvement is not anticipated where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.61 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Leptocereus grantianus* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Leptocereus grantianus*;

(2) The location of any additional populations of *Leptocereus grantianus*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts of *Leptocereus grantianus*.

Final promulgation of the regulation of *Leptocereus grantianus* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Britton, N. 1933. An undescribed cactus of Culebra Island, Puerto Rico. Cactus and Succ. Soc. Amer. 5:469.

Proctor, G. R. 1991. Status report on *Leptocereus grantianus* Britton. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Boquerón, Puerto Rico. 8 pp.

Author

The primary author of the proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 116 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Cactaceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cactaceae—Cactus family:						
*	*	*	*	*	*	
Leptocereus grantianus	None	U.S.A. (PR)	E		NA	NA
*	*	*	*	*	*	

Dated: May 4, 1992:

Bruce Blanchard,

Acting Director, Fish and Wildlife Service

[FR Doc. 92–11813 Filed 5–19–92; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Plant Pinguicula Ionantha (Godfrey's Butterwort)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Pinguicula ionantha* (Godfrey's butterwort) as a threatened species pursuant to the Endangered Species Act of 1973 (Act), as amended. This plant is native to five counties in the Florida panhandle, where it occurs in bogs, pineland depressions, and ditches. It is threatened by habitat degradation due to lack of prescribed fire and shading by planted pines. This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for *Pinguicula ionantha*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by July 20, 1992. Public hearing requests must be received by July 6, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904–791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

Pinguicula ionantha (Godfrey's butterwort or violet-flowered butterwort) is a member of the bladderwort family (Lentibulariaceae), a small family of carnivorous plants closely related to the snapdragon family (Scrophulariaceae). *Pinguicula ionantha* has a rosette of fleshy, oblong, bright green leaves that are rounded at their tips, with only the edges rolled upward. The rosette is about 15 cm (6 in) across. The upper surfaces of the leaves are covered with short glandular hairs that capture insects. The flowers are on leafless stalks (scapes) about 10–15 cm (4–6 in) tall. When a flower is fully open, its corolla is about 2 cm (almost 1 in) accross. The five corolla lobes are pale violet to white. The throat of the corolla and the corolla tube are deeper violet with dark violet veins. The corolla has a spur 4–5 mm (0.2 in) long that is yellow to olive.

Pinguicula ionantha is one of three *Pinguicula* species in the southeastern United States whose leaves are usually submerged and are relatively flat, rather than rolled up around the edges. The other two species are *Pinguicula primuliflora*, whose flowers have a differently shaped and colored corolla, and *Pinguicula planifolia*, which has red to reddish leaves and much narrower corolla lobes. All three species are endemic to northwestern Florida (Kral 1983). *Pinguicula ionantha* was not described as a distinct species until 1961, partly because the complex flowers and fleshy leaves of butterworts make poor herbarium specimens, partly because the species is rare (Godfrey and Stripling 1961, Godfrey and Wooten 1981, Wood and Godfrey 1957).

The geographic range of *Pinguicula ionantha* is in the Florida panhandle near the Gulf coast between Tallahassee and Panama City (Godfrey and Wooten 1981, Florida Natural Areas Inventory (FNAI) 1989). The FNAI database has 20 element occurrences (a technical term in Heritage program methodology) for this plant, representing herbarium specimens collected since 1956 and reliable sightings. Eight occurrences that date from before 1970 have not been seen since. Twelve occurrences are from 1980–1990. Four occurrences are in the Apalachicola National Forest in Liberty County (within the National Forest, the FNAI follows a practice of defining "occurrences" along compartment boundaries, which often results in more occurrences being recorded than would be the case on private land). A summary by Thomas Gibson of data available from herbaria (assembled in the late 1970's) showed the following number of sites by county: Bay 3, Franklin 4, Gulf 1, Liberty 2, for a total of 10 sites. Gibson defined sites as separated by at least 3 miles.

An extensive field survey for potentially threatened and endangered plants in the range of *Pinguicula ionantha* (FNAI 1989) located only one new site for this plant. Reports by Donald Schnell (*in litt.* 1990) and comments in Kral (1983), Thomas Gibson (*in litt.*, ca. 1978), and Loran Anderson (*in* FNAI 1989), show that *Pinguicula ionantha* is locally abundant in Apalachicola National Forest and is (or was until recently) locally abundant elsewhere. A survey for this butterwort during its flowering season could provide more detailed information on its status, but the available data are sufficient to proceed with listing.

Pinguicula ionantha inhabits seepage bogs on gentle slopes, deep quagmire bogs, ditches, and depressions in grassy pine flatwoods and grassy savannahs. It often occurs in shallow standing water. The most similar species, *Pinguicula primulifolia*, occurs in the same geographic area, but it often occupies a somewhat different habitat, occurring in flowing water and shaded areas. The habitat difference provided a clue to Godfrey and Stripling (1961) that the two species were distinct. Another endemic butterwort species, *Pinguicula planifolia*, occurs with *Pinguicula ionantha* at one site. In Franklin County, *Pinguicula ionantha* occurs at a savannah with a particularly rich flora, including *Macbridea alba* (white birds-in-a-nest) and *Scutellaria floridana* (Florida skullcap), both proposed for Federal listing as threatened species.

Savannahs (also spelled savanna; also called grass-sedge bogs or wet prairies) (Frost et al. 1986) are nearly treeless and shrubless and have rich floras of grasses, sedges, and herbs. Savannah vegetation, grassy seepage bogs, and the grassy understory of flatwoods (largely wiregrass, *Aristida stricta*) are maintained by frequent, low-intensity fires. Lightning fires tend to occur during the growing season, and the region's history of fire-setting (and suppression) by humans is long and complex. The frequency and season of fire is important to the plant species that make up the vegetation, but fire effects can be subtle and more research is needed if fire management is to be applied scientifically to conserving the native flora (Robbins and Myers in preparation, Clewell 1986). Savannahs resembling those of the Apalachicola area occur in the Cape Fear region of North Carolina (Walker and Peet 1985) and in coastal Alabama and Mississippi (Norquist 1984).

Savannahs and related vegetation are commercially valueless unless they are planted to pine trees or converted to pasture or farmland. To prepare savannahs for planting pines, bedding and other mechanical methods are employed, which may be destructive to native herbs (Kral 1983). After site preparation, and for the first few years after a new crop of pines is planted, surviving native herbs often prosper (FNAI 1989 includes examples). One occurrence for *Pinguicula ionantha* in

the FNAI database is from "bedded slash pine/pond cypress scrubby woods. Troughs between beds holding water. Intact *Aristida* groundcover." As the young pines grow large enough to cast shade, many understory grasses and herbs, including *Pinguicula ionantha*, are adversely affected (Kral 1983). Clewell (1986, p. 402) considered it "unlikely that many [pine] plantations will continue to support significant remnants of the original ground cover" and that because most ground cover plants reproduce slowly, there is little reason to expect them to be able to recolonize pine plantations from which they are extirpated; as a result, Clewell called the conversion of native pinelands to commercial pine plantations "an irreversible and irretrievable loss of habitat".

Savannah herbs, including *Pinguicula ionantha*, often persist under powerlines and on road rights of way. The permanence of such semi-artificial habitats is uncertain.

Lack of prescribed fire or prescribed fire during the dormant season is detrimental to much of the pineland and savannah flora (Robbins and Myers in prep.; Platt *et al.* 1988). In recent years, liability problems strongly discouraged private landowners in Florida from applying prescribed fire; the Florida legislature passed a prescribed burning bill in 1990 intended to encourage the responsible use of fire. Increasing interest in growing season burning by researchers and public land managers may influence some private landowners.

In the absence of frequent fire, titi (*Cyrilla racemiflora* and *Cliftonia monophylla*) invades savannahs and seepage bogs, creating thickets that exclude grasses and herbs, including *Pinguicula ionantha*. Titi encroachment into these habitats is so extensive that the Forset Service plans to reclaim 35,000 acres of titi for pine timber production (National Forests in Florida 1985).

Populations of *Pinguicula ionantha* can fluctuate in size. A site at Carrabelle where Dr. Godfrey saw *Pinguicula ionantha* in abundance in 1990 seemingly had none in 1991. Such changes mean that long term changes in abundance of this plant are probably difficult to assess.

Federal government action on *Pinguicula ionantha* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In this document, *Pinguicula ionantha* was treated as endangered. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended, and giving notice of its intention to review the status of the plant taxa contained within. One June 16, 1976, the Service published a proposed rule (41 FR 24524) to determine some 1,700 U.S. vascular plant species recommended by the Smithsonian report (including *Pinguicula ionantha*) to be endangered species pursuant to section 4 of the Act. This proposal was withdrawn in 1979 (44 FR 12382).

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Pinguicula ionantha* as a category 1 candidate (a taxon for which the Service has on file substantial data on biological vulnerability and threats to support proposing to list it as an endangered or threatened species). A supplement to the notice of review published on November 28, 1983 (48 FR 53640) changed *Pinguicula ionantha* to a category 2 candidate (a taxon for which data in the Service's possession indicate listing is possibly appropriate); the species retained category 2 status in a notice of review published September 27, 1985 (50 FR 39526). A notice of review published February 21, 1990 (55 FR 6184) returned the species to category 1, based on field work conducted by Loran Anderson, Wilson Baker, and Angus Gholson in the Apalachicola National Forest in 1987 (D. White, FNAI, *in litt.*, 1990) and outside the National Forest in 1988 (FNAI 1989).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Pinguicula ionantha* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1990, the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of this proposal constitutes the final petition finding for *Pinguicula ionantha*.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pinguicula ionantha* Godfrey (Godfrey's butterwort) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Pinguicula ionantha has a limited geographic distribution. Within its range, it has been collected or observed at only 20 localities. Because it was only recognized as a distinct species in 1961, there has not been a long record of observations of this plant. Donald Schnell (*in litt.* 1990) considers the plant to be visible mostly in Apalachicola National Forest, where it is locally abundant. On a roadside where *Pinguicula ionantha* has been known to occur since 1960 (FNAI), Schnell commented: "The areas * * * north of Carrabelle have fallen off tremendously in the past ten years due to roadside work, lumbering and development—This area is outside the Forest".

The effects of forest management on *Pinguicula ionantha* are as follows: logging of cypress or pine and site preparation that removes other plants without lowering the water table is likely to favor this plant at least temporarily. Because *Pinguicula ionantha* does not tolerate shade, canopy closure in pine plantations results in loss or diminishment of the species, at least until the next logging (Kral 1983). At the present time, it is not known whether *Pinguicula ionantha* will persist indefinitely under a regime of commerical pulpwood production, but the prospects are unfavorable. If Clewell (1986) is correct in his belief that pinelands and savannahs, once converted to pulpwood production, cannot be restored, then the effects of pulpwood management on *Pinguicula ionantha* are irreversible once they occur.

The Forest Service's practice of conducting prescribed burns during the growing season to reduce the incidence of brown-spot infection of longleaf pine seedlings (Robbins and Myers in preparation) appears to favor many herbs, including *Pinguicula ionantha*. Most private land is planted with slash pine rather than longleaf, reducing the silvicultural need for prescribed fire.

Both commerical forest management and management of the Apalachicola

National Forest have had the effect of allowing titi to encroach into grassy bog and savannah vegetation. This encroachment appears to pose the most serious threat to *Pinguicula ionantha* (J. Palis, Florida Natural Areas Inventory, pers. comm., 1991). Roadside maintenace, fireline cutting, and drainage ditch construction also threaten *Pinguicula ionantha* habitat.

Forest Service management practices are intended to benefit sensitive plant species, especially in the 469–acre Apalachicola Savannah Research Natural Area, which was established in 1978 (National Forests in Florida 1985). Unfortunately, management of this area to date has been based on casual obseravation of plant species rather than scientific monitoring to determine whether management practices benefit senstitive plants in the natural area (J. Walker, D. White, pers. comm., 1990). Folkerts (1977) had already noted the importance of conserving this plant in the National Forest.

In the Tates Hell area of Franklin County, the new owner of a 182,000 acre tract is selling small parcels to individuals; such sales may affect *Pinguicula ionantha* because an increase in the number of landowners and construction of dispersed houses will result in fire suppression. Fire supperison will reduce the habitat available to this species.

B. Overutilization for Commerical, Recreational, Scientific, or Educational Purposes

During the 1970's, *Pinguicula ionantha* was one of the native carnivorous plants "most sought after and actually collected by hobbists for personal use" (D. Schnell, *in litt.*, 1978), but fashion for exotic green plants has died down since then. Collection of *Pinguicula ionantha* by carnivorous plant enthusiasts probably still occurs, but the species is not currently offered for sale in the United States or known to be in foreign trade. The international market is taken up by commerically propagated Mexican species (D. Schnell, R. Hanrahan, T.L. Mellichamp, *in litt.*, 1990).

C. Disease or Predation

Not applicable.

D. *The Inadequacy of Existing Regulatory Mechanisms*

Pinguicula ionantha is listed as an endangered species under the Preservation of Native Flora of Florida law (Sec. 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The primary threat to *Pinguicula ionantha* is habitat alteration and lack of habitat management, which is not regulated by this Florida law. The Endangered Species Act will provide additional protection through sections 7 and 9, and through recovery planning.

E. *Other Natural or Manmade Factors Affecting its Continued Existence*

The limited geographic distribution of this plant, and the uniformity of land use practices in most of its range exacerbates the risks posed to *Pinguicula ionantha* by the preceding four factors, making it possible that unless conservation measures are taken, this species is likely, in the foreseeable future, to be in danger of extinction throughout a significant portion of its range, fitting the Act's definition of a threatened species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose the rule. Based on this evaluation, the preferred action is to list *Pinguicula ionantha* as threatened.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Designation of critical habitat is not prudent if one or both of the following situations exist: (1) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

The Service finds that designation of critical habitat is not prudent for *Pinguicula ionantha*. Publication of critical habitat descriptions and maps would increase the exposure of this plant to take by carnivorous plant enthusiasts. Such plants are in great demand by commercial interests. Designation of critical habitat on private land provides no protection from take by the landowners or persons with landowners' permission; such a designation would encourage private landowners to remove or discourage the plant rather than risk potential State restrictions on land use or restrictions on herbicide use.

If *Pinguicula ionantha* is determined to be endangered or threatened, the Forest Service will be able to incorporate management measures for this plant into its planning and management systems, probably by formal agreement with the Fish and Wildlife Service. Principal private landowners can be notified of locations and the importance of protecting this species' habitat through several mechanisms, including Florida's system for protecting endangered and threatened species from pesticide (including herbicide) application, and Florida's procedures for regional and local planning. Protection of the habitat of *Pinguicula ionantha* will be addressed through the recovery process and through the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) rquires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Listing *Pinguicula ionantha* will encourage efforts to conserve it in Apalachicola National Forest. The Florida Department of Agriculture and Consumer Services will ensure that it is not jeopardized by herbicide use under a program approved by the

Environmental Protection Agency. Listing of *Pinguicula ionantha* will also encourage its conservation through Florida Department of Community Affairs, and may encourage land acquisition or other land conservation measures by the State.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 for threatened plants, set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession this species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that relatively few trade permits will be sought or issued because *Pinguicula ionantha* is not known to be traded at the present time. Requests for copies of the regulations for listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, VA 22203 (703/358–2104 or FTS 921–2104).

Public Comments Solicited

The Service intends that any final rule resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Jacksonville, Florida Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Mr. David Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, Subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwide noted

2. It is proposed to amend § 17.12(h) by adding, in alphabetical order, the family Lentibulariaceae and the following entry to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h)* * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Lentibulariaceae—Bladderwort family:						
Pinguicula ionantha	Godfrey's butterwort	U.S.A. (FL)	T		NA	NA
*	*	*	*	*	*	*

Dated: May 7, 1992.

Bruce Blanchard

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–11830 Filed 5–19–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status for a Florida Plant, Okeechobee Gourd

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the Okeechobee gourd, *Cucurbita okeechobeensis*, as an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. This vine is native to the southern shores of Lake Okeechobee in Palm Beach County in south Florida; it also has been collected in Glades County on an island in Lake Okeechobee and in Broward and Dade Counties, where it was apparently ephemeral. Nearly all of this vine's former native habitat has been developed for agricultural purposes. The vine persists at a few sites on the shore of Lake Okeechobee, where it is vulnerable to vegetation management measures and to the consequences of water level management. The small sizes of the existing populations also render the species highly vulnerable to extinction. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by July 20, 1992. Public hearing requests must be received by July 6, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Michael M. Bentzien, Assistant Field Supervisor, at the above address (telephone: 904–791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

Cucurbita okeechobeensis (Okeechobee gourd) is an annual, fibrous-rooted, high-climbing vine with tendrils belonging to the gourd family (Cucurbitaceae). Its leaf blades are heart-to-kidney shaped, with 5–7 shallow, angular lobes and irregularly serrated margins (the closely related *Cucurbita martinezii* has more regularly serrated margins) (Walters and Decker-Walters, in press). Young leaves are covered with soft hairs. The cream colored flowers are bell-shaped, with the corolla 6–7 centimeters (2–3 inches) long; they can be distinguished from flowers of *C. martinezii* by the presence of dense pubescence (hairs) on the hypanthium (the tube formed by the fused bases of the petals and sepals) of the male flower and on the ovary of the female flower. The gourd is globular or slightly oblong, light green with 10 indistinct stripes, hard shelled with bitter flesh. The seeds are gray-green and flat (Small 1930, Tatje 1980, Walters and Decker-Walters 1991).

Merrill (1944) and Harper (1958) speculated that William Bartram saw the Okeechobee gourd on the St. Johns River in northern Florida, but archeological study of seed remains indicates that another wild cucurbit (*Cucurbita pepo* ssp. *ovifera* var. *texana*) was present in the watershed until the 18th century, so Bartram did not necessarily see the Okeechobee gourd (Decker and Newsom 1988).

Small (1922, 1930) found the Okeechobee gourd to be locally common in pond apple (*Annona glabra*) forests along the south shore of Lake Okeechobee, but at least 95 percent of this habitat had already been destroyed by 1930 when he named the gourd *Pepo okeechobeensis* (Small 1930). Bailey (1930) transferred the species to the genus *Cucurbita*, which includes pumpkins, squashes, and gourds. In a subsequent publication, Bailey (1943) described two new gourd species, *Cucurbita martinezii* and *Cucurbita lundelliana* (Martinez and Lundell gourds, respectively). These two species have proven to be closely related to *C. okeechobeensis* (Rhodes et al. 1968, Bemis et al. 1970). The three species are the only members of the genus *Cucurbita* with small gray-green seeds, and *C. martinezii* and *C. okeechobeensis* are the only species with cream-colored corollas (all others are bright yellow). *Cucurbita martinezii* occurs in Mexico near the Gulf coast in the states of Veracruz, Tamaulipas, eastern San Luis Potosi, and Puebla, as well as in northern Oaxaca and Chiapas. The high-climbing vines grow at forest edges, along streams, and as a weed in coffee and citrus plantations. *Cucurbita lundelliana* is restricted to the limestone plains of Yucatán in Mexico, Belize, and Guatemala, as well as Honduras (Walters and Decker-Walters 1991).

Robinson and Puchalski (1980) re-examined the herbarium specimens Bailey had used or made from cultivated material, as well as more recent specimens, available cultivated material, and information on morphology, crossability, disease resistance, and isozymes (including their own work). They showed that the morphological distinctions Bailey had made between *C. okeechobeensis* and *C. martinezii* were incorrect, that the two taxa seemed indistinguishable, and that they should be assigned to the same species.

Previously, Filou (1966) had recognized the similarity between the Okeechobee and Martinez gourds, recognizing them as varieties, with the Martinez gourd called *Cucurbita okeechobeensis* var. *martinezii*.

However, this new combination of names by Filov fails to meet the requirements of the International Code of Botanical Nomenclature because neither Small's original name for the plant nor Small's nor Bailey's publications were cited.

Andres and Nabhan (1988) recognized the Okeechobee gourd and the Martinez gourd as geographical subspecies, based on a survey of 10 enzyme systems; the two taxa appeared distinct for one of the 10 systems. They also found that the Martinez and the Lundell gourd were identical for that one system. R.W. Robinson (in litt. 1988) rejected the idea of establishing a subspecies on the basis of a single allelic difference. The Service, agreeing with Robinson's assessment, took the position that until further systematic study showed otherwise, the Okeechobee gourd in Florida could not reasonably be considered distinct from the widespread Mexican *C. martinezii*, and was consequently ineligible for federal listing.

In 1990, the Service helped fund a field and systematic survey of the gourd sponsored by the Center for Plant Conservation and conducted by Terrence W. Walters and Deena Decker-Walters, experts on the systematics of *Cucurbita*. The new study coincided with a severe drought that lowered the level of Lake Okeechobee, exposing bare ground that provided optimal germination and growing conditions for the Okeechobee gourd. As a result, the Walters' searches for the gourd were highly successful.

The Walters systematic study analyzed morphological, phenological (time of flowering and fruiting) characters and isozyme characters. They found that *Cucurbita lundelliana* is morphologically distinct from the other two taxa (as other taxonomists had found). There is a general lack of morphological discontinuities between *C. okeechobeensis* and *C. martinezii*, except that the two taxa can be reliably distinguished by the presence of pubescence on the male hypanthium and female ovary in *C. okeechobeensis*. The Walters' isozyme analysis surveyed 10 enzyme systems, revealing 40 alleles at 20 loci. The analysis showed substantial genetic diversity within *C. lundelliana—martinezii* more than exists within C. *okeechobeensis* and *C. martinezii* if they are considered a single species. The Walters confirmed the report of Andres and Nabhan (1988) that all the populations of *Cucurbita okeechobeensis* are fixed for a unique allele at one locus, while the other two taxa are fixed for another allele.

The Walters conclude that *C. lundelliana* is an older, genetically more diverse species than the other two, and that *C. lundelliana* exhibits a closer relationship to *C. martinezii* than to *C. okeechobeensis*. For the most part, the alleles present in *C. okeechobeensis* are a subset of those present in *C. martinezii*, although the two taxa can readily be distinguished. Using the methods of Nei (1981) and Sarich (1977), the Walters calculated an estimated time since divergence between *C. martinezii* and *C. okeechobeensis* around 450,000 years ago. While these calculations must be interpreted cautiously, they suggest that *C. okeechobeensis* is more likely a remnant population from a time when its ancestors had a continuous distribution around the periphery of the Gulf of Mexico, rather than a recent immigrant to Florida that floated across the Gulf of Mexico or was deliberately introduced by Indians.

Overall, the Walters found that *C. lundelliana* was distinct, to an extent typical of full species, from the other two taxa, and that *C. martinezii* and *C. okeechobeensis* should be considered distinct at the subspecies level. Under the rules of botanical nomenclature, the name *Cucurbita okeechobeensis* will be applied to both the Okeechobee and Martinez gourds, with the Okeechobee gourd becoming subspecies *okeechobeensis* (Andres and Nabhan 1988). The nomenclatural transfer will be published by Walters and Decker-Walters (in press). In the interim, the Okeechobee gourd can be called *Cucurbita okeechobeensis sensu stricto* (i.e. in the narrow sense). References to *Cucurbita okeechobeensis* or Okeechobee gourd in this proposal refer exclusively to the Florida plants.

Okeechobee gourd persisted around Indian villages with the Seminole pumpkin, *Cucurbita moschata* (Small 1930). The Seminole pumpkin, with edible flesh, had been an important food crop, while the extremely bitter flesh of the Okeechobee gourd precludes its use for food, although the seeds are edible and nutritious, and the flesh has detergent properties (Robinson and Puchalski 1980). Okeechobee gourd may have been used as "the fruit of *C. martinezii* was, at least until the recent past, as a ball or rattle, a utensil such as a small ceremonial cup, or for its detergent quality" (Andres and Nabhan 1988). The Seminole pumpkin is still cultivated in Florida, and may have been confused with the Okeechobee gourd by Avery and Loope (1980). Morton's (1975) suggestion that the Seminole pumpkin may be a derivative of the Okeechobee gourd is not supported by systematists (Bailey 1930, Andres and Nabhan 1988).

Cucurbita martinezii is currently used as a source of disease resistance for summer squash, pumpkins, and gourds (*Cucurbita pepo*) (T. Andres, Cornell Univ., pers. comm. 1987). It and *Cucurbita okeechobeensis* are resistant to cucumber mosaic virus, powdery mildew, bean yellow mosaic virus, tobacco ringspot virus, tomato ringspot virus, and squash mosaic virus (Robinson 1980). Both of these wild gourds represent germplasm that can be used in breeding economically valuable cultivated members of the Cucurbitaceae family (Esquinas-Alcazar and Gulick 1983), and both of these wild gourds are maintained in cultivation for this purpose. Additionally, the Okeechobee gourd has in its leaves, roots, and fruits, the richest content of cucurbitacins in the genus. These bitter chemicals render the fruits inedible, if not poisonous, to humans, but are attractive to southern corn rootworm and striped cucumber beetle, so cucurbitacin-rich plants could be used to lure these pests away from crops (G. Nabhan, Desert Botanical Garden, in litt. 1988).

The Okeechobee gourd was collected or observed infrequently after 1930; in 1941, it was found on Observation Island in Lake Okeechobee, Glades County. This mile-long island, covered with Australian pine, is accessible only be helicopter or airboat and lies within the critical habitat of the federally endangered snail kite (*Rostrhamus sociabilis plumbeus*). A search of 22 sites on or near the southern shores of Lake Okeechobee (Tatje 1980) failed to find the gourd, but a 1981 search turned up the gourd in some of the same areas: lake, levee, and canal banks at Kreamer and Torry Islands in Lake Okeechobee near Belle Glade (Florida Natural Areas Inventory data). In 1965, it was seen north of Homestead in an agricultural area of Dade County (Florida Natural Areas Inventory data). A population on a disturbed roadside north of Andytown, Broward County, was discovered in 1978 and destroyed by road construction the next year (Tatje 1980). The plant has not been observed by personnel of the South Florida Water Management District, which manages much of the potential habitat in and near Lake Okeechobee (W. Dineen, South Florida Water Mgt. Distr., pers. comm. 1986).

Gary Paul Nabhan (in litt. 1987; 1988) and Jono Miller searched for Okeechobee gourd in March 1987. They found three gourds in a small remnant

stand of small pond apples, many of them apparently in decline, with dead branches. The stand was inundated in 1.5–2 feet of water with the lake at 15.2–15.3 feet above mean sea level (lake level provided by Mr. Walt Dineen, South Florida Water Management District). Nabhan noted that the gourd seemed to need the natural trellises of pond apple branches, although the pond apple persists at some sites where gourds have not been seen, including Ritta Island on the south side of the lake. Nabhan suggested that remnant pond apple stands cound be managed to encourage both pond apples and gourds, possibly by erecting low levees to provide winter low water levels of 12 feet or lower, to provide exposed ground for gourd seeds to germinate. Gourd vines had last been seen in 1981, when a drought caused the lake to drop to its lowest recorded level of 9.75 feet (Florida Natural Areas Inventory).

In winter and early spring of 1990–91, during a drought when Lake Okeechobee's level was about 12 feet, Walters and Decker-Walters (1991) found 50 gourds at Nabhan's site, and 10 other population sites. Gourd plants were found climbing on pond apple trees, and, more abundantly, on elderberries and other woody plants, including papaya. Gourds also sprawled across herbaceous plants—something Nabhan had looked for but not seen. The Walters and Nabhan both suggest that Okeechobee gourds disperse by floating in canals; the Walters provide evidence that marsh rabbits are the main terrestrial dispersal agent. They saw a rabbit gnawing on a green gourd and saw gnawed and broken gourds in animal nests, presumably made by marsh rabbits.

Excellent seed germination sites for the Okeechobee gourd appear to be provided by alligator nests, where water-dispersed gourds wash up on shore and the seeds germinate in warm soil in full sun, without competition from other plants. The seeds germinate in early spring during the dry season, when the lake level is low (seedlings do not tolerate water-soaked soils for extended periods of time). By the rainy season, the vines have climbed shrubs, avoiding complete inundation as the lake rises. The Walters conclude that "for the gourd to maintain viable health populations, fluctuations in lake level are necessary. High lake levels facilitate gourd dispersal and inundate and destroy aggressive weeds in local habitats. As lake levels decrease, the cleared open habitats allow the quickly germinating Okeechobee gourd seeds to sprout and begin climbing before they have to compete with other pioneer species."

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. *Cucurbita okeechobeensis* was included in these documents as a threatened species. On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Cucurbita okeechobeensis* as a category 2 candidate (a taxon for which data in the Service's possession indicates listing is possibly appropriate); the species retained category 2 status in a notice of review published September 27, 1985 (50 FR 39526).

In the notice of review published February 21, 1990 (55 FR 6184), the gourd was changed to Category 3B (a name that, on the basis of current taxonomic understanding, does not represent a distinct taxon meeting the Act's definition of "species"). The change came after the Service concurred with comments by Richard W. Robinson (New York State Agricultural Experiment Station, in litt. 1988), a specialist in the genus, who did not support the recognition of a taxonomic distinction between the Florida plants of *Cucurbita okeechobeensis* from those of *Cucurbita martinezii*, of Mexico. Gary Paul Nabhan (Desert Botanical Garden, Phoenix, in litt. 1988 and pers. comm.) and other specialists in *Cucurbita* had urged proceeding with listing. The taxonomic questions that prevented listing have been answered by Walters and Decker-Walters (1991).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Cucurbita okeechobeensis* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1989, the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. In 1990, the notice of review removed the gourd from consideration for listing because it appeared ineligible, based on the current understanding of its taxonomy. The 1991 status survey, funded by the Service, removes the taxonomic uncertainty and provides the information needed to proceed with listing. The present listing proposal constitutes the final petition finding.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cucurbita okeechobeensis* (Small) Bailey *sensu stricto* (=*Pepo okeechobeensis* Small), Okeechobee gourd, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Unitl the 1920's Okeechobee gourd was abundant in swampy pond apple forests along the shore of Lake Okeechobee. John K. Small (1930) estimated that 95 percent of the former range of Okeechobee gourd had already been destroyed by agricultural development. It would appear that by 1930 Okeechobee gourd met the present-day standards for listing as an endangered species.

Since 1930, natural vegetation that remained along the lake shores was further affected by lowering of the lake level from a maximum of about 20 feet above sea level (with an extreme range of stage of 7 or 8 feet). During the 1920's attempts were made to keep the lake within 13.5 to 16.5 feet (with the lake staying below minimum for most of three years). The current preferred range is 15.5 to 17.5 feet (Johnson 1974, Blake 1980, Fernald and Patton 1984). The lake level has fallen below the preferred range during dry periods in recent years, providing bare muck where the Okeechobee gourd's seeds can germinate. Any change in lake level management that would reduce the likelihood of low water would threaten this species, and changes in management that would result in more

frequent low-water episodes might be beneficial.

Construction of the Hoover Dike and other water management facilities, planting of exotic melaleuca trees, the spread of Australian pine (*Casuarina*), and the use of Torry and Kreamer Islands (now owned by the State) for pasture also affected the habitat of this plant. Herbicide use for vegetation management purposes may also have affected the gourd. The Okeechobee gourd persists, in small numbers, in highly modified vegetation, and is highly vulnerable to further modifications of that vegetation.

B. Overutlization for Commerical, Recreational, Scientific, or Educational Purposes

Due to the limited distribution and small population sizes of Okeechobee gourd, indiscriminate collecting of any nature could seriously affect this species. Hobbyist interest in gourds raises the possibility of such collecting.

C. Diseases or Predation

Not applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

Cucurbita okeechobeensis is listed as an endangered species under the Preservation of Native Flora of Florida law (section 581, 185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will provide additional protection through sections 7 and 9, recovery planning, and the Act's additional penalties for taking of plants in violation of Florida law.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The Okeechobee gourd is extremely sensitive to frost damage, much more so than tomatoes (R.W Robinson, pers. comm. 1987). This sensitivity probably limits its range, but the taxon did survive the extraordinary freezes of the 1980's, possibly because its annual life cycle minimizes the risk of freeze damage, with germination in early spring and fruit maturation by December. The small number of populations of Okeechobee gourd and their genetic uniformity raises questions about whether the plants might be suffering inbreeding depression (Falk and Hosinger 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose the rule. Based on this evaluation, the preferred action is to list *Cucurbita okeechobeensis* as an endangered species. As discussed under Factor E., the great majority of the habitat of this species was destroyed 50 years ago, and the species is barely persisting in heavily modified areas that are subject to erratic flooding. Thus, this species meets the Act's requirements for listing as an endangered species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. All of the populations of Okeechobee gourd are very small and localized. Designation of critical habitat could attract collectors and curisioity-seekers, inasmuch as there is hobbyist interest in gourds. Although Federal listing as endangered provides penalties in addition to those provided in Florida law against unauthorized removal of Okeechobee gourd plants from public land, such prohibitions against take are difficult to enforce, and publication of critical habitat descriptions and maps would only add to the threats faced by this species. Designation of critical habitat could help focus the attention of managers for the Army Corps of Engineers and the South Florida Water Management District, but because Federal land managers are held to substantially the same standard for adverse modification of critical habitat as for jeopardizing the continued existence of the species (under section 7 of the Act), designation of critical habitat would not appreciably increase the protection offered to this species. Designation of critical habitat may also be imprudent because the habitat currently occupied by Okeechobee gourd is badly degraded and probably only marginally suited to the species; recovery will likely require restoration or other manipulations of its current or potential habit. Labelling the existing habitat as "critical" does nothing to encourage needed changes.

Restoration and protection of this species' habitat will be addressed through the recovery process and through the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being disignated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

The populations of Okeechobee gourd at the periphery of Lake Okeechobee will require careful management, possibly including a program of habitat modification and enhancement, should such measures prove feasible. Control of extirpation of exotic pest plants such as melaleuca and Brazilian pepper and planting of pond apple may be necessary or desirable to protect existing populations of Okeechobee gourd or to restore former hibitat.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions for all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to

possession these species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendements (Pub. L. 100–478) to the act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibitied activities involving threatened species under certain circumstances.

It is anticipated that trade permits will be sought and issued because Okeechobee gourd seeds are transported across state lines, and probably internationally, in the course of plant breeding activities and maintenance of cultivated stocks and germplasm. The Okeechobee gourd does not appear to be sold across state lines to any large extent. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final rule resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agenices, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the ranges, distributions, and population sizes of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Jacksonville, Florida, Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited herein is available upon request from the Service's Jacksonville Field Office (see "**ADDRESSES**" section).

Author

The primary author of this proposed rule is Mr. David Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Cucurbitaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Cucurbitaceae—Gourd Family:						
*	*	*	*	*	*	
Cucurbita okeechobeensis	Okeechobee gourd	U.S.A. (FL)	E	.....	NA	NA
*	*	*	*	*	*	

Dated: May 4, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–11831 Filed 5–19–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 98
Wednesday, May 20, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States. The meeting will be held at 2 p.m. on Thursday, June 11, 1992, at the Administrative Conference of the United States, suite 500, 2120 L Street NW., Washington, DC (Library, 5th floor).

The Committee will meet to discuss a study by Professor Paul C. Light, Hubert H. Humphrey Institute of Public Affairs, University of Minnesota, to examine the role and operations of Offices of Inspector General.

For further information concerning this meeting, contact David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC. (Telephone: 202–254–7065.)

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: May 14, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92–11823 Filed 5–19–92; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: June 24–25, 1992.

Place: United States Department of Agriculture, Agricultural Research Service, U.S. Grain Marketing Research Laboratory, 1515 College Avenue, Manhattan, Kansas 66502.

Time: 10:30 a.m. June 24 and 8 a.m. June 25.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes:

(1) Current research projects,
(2) Status of financial matters,
(3) Official Commercial Inspection,
(4) Status of standards and regulations,
(5) Blending of aflatoxin-contaminated corn,
(6) Prohibiting the addition of water to grain,
(7) Pesticide residue report,
(8) Wheat protein activities,
(9) NIRT moisture measurement,
(10) Odor detection in grain, and
(11) Other matters.

The meeting will be open to the public. Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact John C. Foltz, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC. 20090–6454, telephone (202) 720–0219.

Dated: May 13, 1992.

John C. Foltz,

Administrator.

[FR Doc. 92–11711 Filed 5–19–92; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

United Water Conservation District Water Transfer Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a Water Transfer Project, United Water District. This is in response to United Water Conservation District's proposal to intermittently use Piru Creek to take delivery of State Water Project water and water purchased from other sources and store it in Lake Piru, a storage reservoir owned and operated by United Water Conservation District. This document will also be an Environmental Impact Report complying with the California Environmental Quality Act on the proposal. A joint document will be prepared. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by June 30, 1992.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Charles McDonald, Environmental Coordinator, Angeles National Forest, 701 N. Santa Anita Avenue, Arcadia, CA 91006–2799.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Mr. McDonald the above address or phone (818) 574–5257.

SUPPLEMENTARY INFORMATION: The Angeles National Forest Land and Resources Management Plan, Final Environmental Impact Statement and Record of Decision have been issued.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives.

Michael J. Rogers, Forest Supervisor, Angeles National Forest, Arcadia, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the proponent and their individuals or organizations who may be interested in or affected by the proposed action. This

input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Forest Service and the District will hold the following public scoping meeting: Tuesday, May 26, 1992, 7 p.m., Santa Paula Community Center, 530 W. Main Street, West Side Room, Santa Paula, California 93060.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 1992. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in this proposal participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by May, 1993. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies and making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: May 4, 1992.

Michael J. Rogers,

Forest Supervisor.

[FR Doc. 92-11502 Filed 5-14-92; 8:45 am]

BILLING CODE 3410-11-M

[3410-11]

Grasshopper Timber Sale, San Juan National Forest, La Plata County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to harvest timber from Tank Mesa on the Animas Ranger District, San Jaun National Forest.

Timber from the National Forest is converted into a number of wood products such as lumber, house logs, panelling, and furniture. This project, along with other similar actions, will make timber available to such businesses or individuals for purchase as raw materials.

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision-making process for this proposal so that interested and affected people may know how they can participate in the environmental analysis and contribute to the final decision. Scoping for this project began in October, 1991, and has included distributing a project description to individuals and organizations and inviting comment, running news articles announcing the project, and conducting briefings for interested organizations. A public scoping meetings is scheduled to be held at the project site in August 1992 (specific date to be announced). The purpose of this meeting is to familiarize participants with the project site and to discuss the issues members of the public or agenices believe are involved in the proposal. Knowledge of the issues will help establish the scope of the Forest Service environmental analysis and define the kind and range of alternatives to be considered. Forest Service officials will conduct a tour of the project area and describe and explain the proposed action and the process of environmental analysis to be followed in evaluating proposal. The Forest Service welcomes any public comments on the proposal.

DATES: Comments concerning the scope of the analysis should be received in writing by June 15, 1992.

ADDRESSES: Send written comments to Theodore W. LaMay, District Ranger, Animas Ranger District, San Juan National Forest, 701 Camino del Rio, Durango, Colorado, 81301. (303) 385-1283.

FOR FURTHER INFORMATION CONTACT: Dave Crawford, Silviculturalist. Same address. Phone: (303) 385-1283.

SUPPLEMENTARY INFORMATION: The Grasshopper timber harvest proposal involves the harvesting of timber and transport of logs from the project area to a processing facility. Harvesting will generally occur on slopes less than or equal to 35 percent and will require the use of conventional log skidding equipment. The harvesting method will involve marking individual trees for removal, while leaving approximately 80 percent of the volume in treated stands unharvested. Under this system of harvest, the timber sale may yield a volume of 3.3 MMBF if all 650 acres of timber under consideration are harvested. The actual volume of timber removed from the project area will depend on the harvesting alternative selected. The project will also require reconstructing 1.8 miles of permanent Forest System roads, and constructing from 0.0 to 5.0 miles of road.

Scoping for this project began on October 10, 1991 when a newsletter was mailed to 92 interested individuals and organizations. The document described the project area and the Forest Service proposal for timber harvest. Further public notification of the project was provided through newspapers and presentations to interested groups. An interdisciplinary planning team (ID Team) review of the scoping comments formed the basis for initial issue

identification. The ID Team recommended that the project may constitute a significant federal action and recommended preparation of an environmental impact statement.

The decision to be made involves whether to proceed with the project and, if so, what type of project design to adapt. The environmental analysis will address harvesting methods, harvest unit locations, road locations, and will identify the environmental protection measures necessary to meet the standard and guidelines for environmental protection required by the San Juan NF Land and Resource Management Plan (Forest Plan).

The deciding officer will be William T. Sexton, Forest Supervisor, San Juan National Forest, 701 Camino Del Rio, Durango, Colorado, 81301.

We expect to publish a draft environmental impact statement in November, 1992, to ask for public comment on the draft material for a period of 45 days, and to complete the final environmental impact statement in February, 1993.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in the proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.) Please note that comments you make on the draft environmental impact statement will be regarded as public information.

Dated: May 4, 1992.

William T. Sexton,

Forest Supervisor.

[FR Doc. 92-11728 Filed 5-19-92; 8:45 a.m.]

BILLING CODE 3410-11-M

Rocky Mountain Region; Environmental Impact Statement for Bark Beetle Infestation in Ponderosa Pine on the Uncompahgre National Forest; Grand Mesa, Uncompahgre and Gunnison National Forests, Montrose, Ouray, San Miguel and Mesa Counties, CO

AGENCY: Forest Service, USDA.

ACTION: Cancellation Notice of original notice of intent to prepare an environmental impact statement (55 FR 6664, February 26, 1990).

SUMMARY: The Forest Service will not prepare an environmental impact statement on management issues associated with the mountain pine beetle infestation on the Uncompahgre National Forest for the following reasons:

(1) The mountain pine beetle epidemic has subsided from 82,000 trees killed on 14,000 acres in 1988 to 1,300 trees killed on 1,400 acres in 1991. While the epidemic is at this lower level, the Forest plans to move into a long term mountain pine beetle management program.

(2) The decisions necessary to propose a long term program are NFMA programmatic decisions within the scope of the Grand Mesa, Uncompahgre and Gunnison National Forests Land and Resource Management Plan.

(3) Site specific NEPA decisions will be assessed through the appropriate NEPA documents once a set of site specific proposed actions are developed.

(4) The Forest will prepare an area analysis to aid in identifying and prioritizing site specific projects, defining issues, direct effects, indirect effects and cumulative effects to be analyzed in each site specific NEPA document.

The responsible official for this decision is Robert L. Storch, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416.

DATES: Cancellation of the Notice of Intent is effective immediately upon publication of this notice in the **Federal Register.**

ADDRESSES: Send written comments to Richard P. Cook, District Ranger, Norwood Ranger District, P.O. Box 388, Norwood, Colorado, 81423.

FOR FURTHER INFORMATION CONTACT: Robert Huthman, Forester, (303) 327-4261.

Dated: May 11, 1992.

Robert L. Storch,

Forest Supervisor.

[FR Doc. 92-11569 Filed 5-19-92; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Lower Mud River Watershed, West Virginia

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of Availability of a Record of Decision.

SUMMARY: Rollin N. Swank, responsible Federal official for projects administered under the provisions of Public Law 83-566, 16 U.S.C. 1001-1008, in the State of West Virginia, is hereby providing notification that a record of decision to proceed with the installation of the Lower Mud River Watershed project is available. Single copies of this record of decision may be obtained from Rollin N. Swank at the address shown below.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, telephone (304) 291-4151.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: May 11, 1992.

Rollin N. Swank,

State Conservationist,

[FR Doc. 92-11739 Filed 5-19-92; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office.
Title: Patent and Trademark Customer Survey.
Form Number: None.
OMB Approval Number: None.
Type of Request: New Collection.
Burden: 546 hours.
Number of Respondents: 3,289.
Avg Hours Per Response: 10 minutes.
Needs and Uses: This survey is designed to obtain customer feedback regarding products and services offered by the U.S. Patent and Trademark Office.
Affected Public: Businesses and other for-profit institutions, small businesses and organizations, non-profit institutions, individuals, Federal agencies or employees.
Frequency: Annually.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Maya A. Bernstein, (202) 395-3785.

Agency: Patent and Trademark Office.
Title: Patent Term Extension.
Form Number: No forms but requirements contained in 37 CFR 1.700.
OMB Approval Number: 0651-0020.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 1,800 hours.
Number of Respondents: 30.
Avg Hours Per Response: 60 hours.
Needs and Uses: This collection is used by the Patent and Trademark Office and the Departments of Agriculture and Health and Human Services to determine if the term of a patent relating to a drug or medical device is eligible for extension.
Affected Public: Businesses or other for-profit organizations, Federal agencies or employees, non-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Maya A. Bernstein, (202) 395-3785.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Maya A. Bernstein, OMB Desk Officer, room 3235 New Executive Office Building, Washington, DC 20503.

Dated: May 14, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-11833 Filed 5-19-92; 8:45 am]

BILLING CODE 3510-CW-F

Bureau of Export Administration

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held June 11, 1992, 10 a.m., U.S. Department of Commerce, Herbert C. Hoover Building, room 4830, 14th and Constitution Avenue, NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session

Status reports by Task Force Chairmen, and update on Export Administration initiatives.

Executive Session

Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved Sept. 27, 1991, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Ms. Betty A. Ferrell (202) 377-2583.

Dated: May 14, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92-11834 Filed 5-19-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-401-603]

Stainless Steel Hollow Products From Sweden; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 12, 1992, the Department of Commerce published the preliminary results of review of the antidumping duty order on stainless steel hollow products from Sweden. The review covers the period December 1, 1989, through November 30, 1990.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of clerical errors, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: May 20, 1992.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Thomas Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 5130) the preliminary results of its administrative review of the antidumping duty order on stainless steel hollow products from Sweden (52 FR 45985, December 3, 1987) for the period December 1, 1989, through November 30, 1990. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is seamless stainless steel hollow products including pipes, tubes, hollow bars, and blanks of circular cross section, containing over 11.5 percent

chromium by weight. This merchandise is currently classified under subheadings 7304.41.00 and 7304.49.00 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of the subject merchandise, Sandvik AB (Sandvik), and the period December 1, 1989, through November 30, 1990.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from petitioners and from Sandvik. The petitioners in this case are the United Steelworkers of America (AFL/CIO) and Al Tech Specialty Steel Corporation (petitioners).

Comment 1: Petitioners contend that the Department improperly failed to deduct U.S. warranty expenses in calculating Sandvik's net U.S. price. They argue that § 353.56(a)(2) of the Department's regulations requires Sandvik to break out its warranty adjustment from its other reported expenses, and that the record shows Sandvik is capable of doing this. The Department should either deny an adjustment for warranty costs in Germany, use best information available (BIA) for warranty costs in the U.S., or require Sandvik to submit additional information on its warranty costs.

Sandvik contends that it fully reported its U.S. warranty expenses, and the Department's decision not to make a separate adjustment for these expenses was correct. It cites the Department's January 6, 1992, sales and cost verification reports as evidence that all costs associated with the reworking of defective merchandise were verified and are captured under other adjustments. Hence, making a further adjustment for them would be double-counting. Sandvik cites Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea (56 FR 16305, April 22, 1991) as a case in which the Department refused to double-count costs which were not reported separately, but were fully absorbed into other reported expenses. Furthermore, the information Sandvik submitted which, petitioners allege, demonstrates the existence of warranty expenses that Sandvik can break out from its other expenses was later acknowledged by Sandvik to have been submitted in error.

Department's Position: At the verification in Scranton, we fully verified that Sandvik's reported expenses included all applicable warranty expenses. Hence, there is no need to make an additional adjustment for warranty expenses, or to resort to BIA.

Comment 2: Sandvik contends that the value of its returned merchandise should not be equated with its U.S. warranty expenses, nor should the Department make a separate adjustment for U.S. warranty expenses. Sandvik included all U.S. warranty expenses in other adjustment fields. Thus, no additional adjustment for them is necessary.

Petitioners contend the Department should not accept Sandvik's methodology because Sandvik is required by law to report warranty expenses separately (19 CFR 353.56(a)(2) (1991)). Furthermore, the record shows that Sandvik is capable of breaking out its warranty expenses from its other expenses. Moreover, Sandvik's methodology may not take into account such expenses as repackaging and redelivery, or the costs of reworking merchandise defective upon delivery from Sweden.

Department's Position: Sandvik's comment is based on a misunderstanding. In the computer program used to calculate the preliminary results, the Department did not make an additional adjustment for warranty expenses beyond what was included in other adjustments.

Petitioners' rebuttal arguments amount to a restatement of the arguments it set forth under comment one. For our response, see comment one.

Comment 3: Sandvik argues the Department should have allowed an adjustment in the German market for the three categories of credit memoranda reported as warranty expenses. Sandvik contends these memoranda are directly related selling expenses and reflect actual reductions in sales revenues received. To penalize Sandvik because it did not break out the expenses associated with warranty memoranda from the other types of memoranda would not only be tantamount to requiring Sandvik to rewrite its accounting records, but is counter to the Department's decision in Color Television Receivers from Korea, (51 FR 41365, November 14, 1986), where it did not require companies to do this.

Petitioners argue the Department should deny this claimed adjustment to FMV because:

(1) The record shows that Sandvik can in fact separate the warranty expenses from the non-warranty expenses;

(2) Sandvik failed to tie warranty expenses to specific sales, which Sandvik should be able to do if such expenses were directly related selling expenses;

(3) Sandvik reported the expenses on a calendar-year basis rather than a review-period basis.

Department's Position: In its questionnaire response, Sandvik submitted a warranty adjustment claim that included credit memoranda issued for corrections to billing errors, the alloy surcharge, and warranty expenses. The presence of these non-warranty expenses in the credit memoranda log was confirmed at verification. In a supplemental questionnaire, we requested that Sandvik separate its warranty from its non-warranty expenses. Sandvik declined to do so, claiming it could not do this within the short period of time required to answer the supplemental questionnaire.

At the verification in Germany, none of the entries selected at random for verification from the credit note ledger were warranty expenses. Furthermore, we also verified that one of the entries in Sandvik's credit ledger was a credit for a rebate, and not for any of the categories of expense Sandvik alleged was included in its warranty claim. Upon verification of this entry, Sandvik admitted that a reduction to its warranty claim was required. Based on these facts, we determined that Sandvik's third-country warranty claim failed verification. Moreover, as a matter of policy, we cannot make a warranty adjustment for expenses that are not warranty expenses. Thus, we have denied this adjustment in these final results as we did in the preliminary results.

Comment 4: Citing case law, petitioners argue that the Department should not make an adjustment to ex-stock sales for pre-sale movement expenses, including brokerage and handling, inland freight, insurance, and packing. These are expenses incurred to move the merchandise from Sweden to Germany. They argue that for ex-stock sales these expenses were incurred prior to sale, and should therefore be counted as indirect selling expenses. Petitioners also argue that the Department should not make a brokerage and handling adjustment to either ex-stock or ex-mill sales because Sandvik reported these expenses on a calendar-year basis rather than a review-period basis, i.e., it based its December 1989 expenses on a calculation involving all 1989 sales, and reported its January 1990 through November 1990 sales on a calculation involving all 1990 sales. The expenses used in this calculation should include only those incurred during the review period, and not during the calendar year. With regard to pre-sale movement expenses for ex-stock sales, Sandvik

argues that the cases petitioners cite to support their argument are dated. The Department's current practice is to make an adjustment for pre-sale movement expenses. This practice has been upheld by the Court of International Trade (CIT). Regarding the method of reporting brokerage and handling expenses for ex-stock and ex-mill sales, Sandvik argues that it has used the calendar year method of reporting its brokerage and handling expenses since the first review of the antidumping duty order, and the Department has never indicated that it was inappropriate. This method is consistent with how Sandvik reported other expenses, and is also consistent with Sandvik's internal financial record keeping.

Department's Position: We agree with Sandvik. Our current practice, approved by the CIT, is to deduct pre-sale movement expenses to third-country markets as direct expenses. *See Ad-Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States* (Court No. 90–10–005–8, Slip Op., 92–24 Ct. Int'l Trade March 5, 1992). See also certain Small Business Telephone Systems and Subassemblies Thereof from Korea; Final Results of Antidumping Duty Administrative Review (57 FR 8298, March 9, 1992).

Furthermore, we do not object to Sandvik's methodology of calculating its brokerage and handling expenses. Sandvik calculated the brokerage and handling expense on a calendar-year basis consistent with its internal financial accounting system. For each calendar year it divided the total brokerage and handling expense by the total value of the merchandise sold. The resulting percentage was then applied to the unit price of each sale to arrive at a brokerage and handling adjustment as a percentage of sales value. For both 1989 and 1990 sales the calculation included all brokerage and handling costs and total sales value for the entire 12-month calendar year. We see no reason why this methodology should skew the results, nor has the petitioner presented any evidence that this methodology would be distortive.

Comment 5: Petitioners argue that the Department should reject the German alloy surcharge data on the tape Sandvik submitted in its supplemental questionnaire response on March 6, 1992. Petitioners contend that because the tape contains no invoice dates, it is not possible to determine whether Sandvik complied with the Department's request to report all alloy surcharges in effect on the date of invoice. Petitioners also allege that steel grades were reported differently on the new tape, thus further rendering it impossible to verify from the surcharge schedules. Petitioners contend that the Department should use BIA as the surcharge amount for the final results.

Sandvik argues that it fully complied with the Department's request to supply a new tape with actual alloy surcharges billed on the date of invoice. It did not supply the Department with invoice dates because the Department did not ask for them. It denies that it reported the steel grades on the new tape differently from the old tape. Thus, in Sandvik's view, there is no justification for resorting to BIA for the final results, and the Department should use the alloy surcharge data on the March 6, 1992, tape submission.

Department's Position: We agree with petitioners that the alloy surcharge data on the German tape Sandvik submitted in its March 6, 1992, supplemental questionnaire response should be rejected. However, the reason for our rejection differs from the reasons offered by the petitioner. In its March 6, 1992, response, Sandvik estimated that the invoice date was seven days after the sales date for ex-stock sales, and twelve weeks after the sales date for ex-mill sales. Snadvik reported its alloy surcharges accordingly. However, Sandvik failed to provide any substantiation for the estimated time lag between sales date and invoice date. Furthermore, the estimated lags did not reflect the actual lags we observed for the sales we reviewed at the verification. *See* verification exhibits on third-country sales, Verification Report, (January 2, 1992). Consequently, we are resorting to the use of BIA.

In selecting the appropriate BIA, we have considered the fact that Sandvik did not keep its alloy surcharge data in a form that allows the surcharges to be matched to sales invoices. *See* Germany/Sweden Sales Verification Report, p. 9. Instead of applying the highest surcharge during the period of review, as proposed by petitioner, we are using as BIA the alloy surcharges reported in the April 12, 1991, questionnaire response, which are based on the date of the purchase order. Because the surcharges tended to decrease over the period of review, and since the order date always comes before the invoice date, these surcharges are generally higher than the surcharges actually paid by the customers on the invoice dates. *See* Exhibit No. 16, April 12, 1991, Questionnaire Response.

Comment 6: Sandvik argues that the Department should make a level-of-trade adjustment whenever it compares a U.S. sale at one level to a German sale at a different level. The basis for this claim is a discount routinely given to distributors that is not given to end-users. Sandvik notes that the relevant regulation, 19 CFR 353.58, does not mention cost as the basis for a level-of-trade adjustment. It argues that, in this case, price is a better basis than cost for calculating a level-of-trade adjustment because it has reported the exact amount by which prices differ than between the two levels.

Petitioners maintain that in order to qualify for a level-of-trade adjustment, Sandvik must show that there are different costs associated with selling at the two levels. As Sandvik has reported only prices, it has failed to meet its burden. They further argue that there could be factors other than the discount affecting the price between the two levels. Furthermore, Sandvik has failed to provide any legal authority to support a reversal of the Department's traditional practice of basing level-of-trade adjustments on cost.

Department's Position: We determined at verification that the discount Sandvik grants to distributors sometimes varies from the percentage Sandvik reported and that, in the United States, there was sometimes no discount given at all. Given this, we disagree with Sandvik that price is a more reliable basis than cost for calculating a level-of-trade adjustment. In this administrative review, no cost information was submitted. Therefore, we must deny the claimed level-of-trade adjustment.

Comment 7: Sandvik argues that the Department should compare sales within the same channel of distribution whenever possible. When this is not possible, the Department should make a circumstance-of-sale adjustment (called a "warehouse mark-up") to reflect the different distribution costs in selling from inventory (ex-stock) as distinguished from selling from the mill (ex-mill).

To support its claim, Sandvik cites the price difference between an identical mix of 32 models sold both ex-stock and ex-mill in the German market. It contends that the identical mix of models isolates the price effect attributable to selling merchandise ex-stock as distinguished from ex-mill. It also says that not all cost differences between the two channels are included in the reported indirect selling expenses. Where certain costs are included in both the warehouse mark-up and indirect selling expenses, Sandvik would have no objection to the Department's reducing the warehouse mark-up to avoid double-counting.

Petitioners argue that the Department should deny this adjustment because Sandvik's evidence is based on price, not cost, and because the adjustment would be double-counting the warehousing costs. Furthermore, Sandvik has failed to show that the Department's approach is not in accordance with law, unsupported by substantial evidence, or otherwise unreasonable.

Department's Position: Unlike comparisons of like quantities and levels of trade, there is no regulatory basis for comparing identical channels of distribution. In this case, we believe that Sandvik has presented insufficient evidence to justify our performing the sales comparisons as it requests. We are unconvinced that the identical nature of Sandvik's product mix successfully isolates the price effect of the difference in selling between the two channels. Other factors that could affect the final price are individual negotiations or bargaining, different sales quantities, and different fiscal quarters. Furthermore, some of the costs that allegedly result in a difference in price are already accounted for in the adjustment for indirect selling expenses. Based on these facts, we determine that Sandvik has not presented sufficient evidence to justify its request that we compare sales of the same channel of distribution whenever possible, and that we make an adjustment when comparing sales of different channels of distribution. Thus, we are denying this claim in these final results as we did in the preliminary results.

Comment 8: Sandvik argues that the Department deducted too much allocated profit in establishing U.S. price when further manufacturing was performed. Sandvik alleges that this occurred due to a miscalculation of the U.S. manufacturing variable that served as part of the numerator in our calculation of U.S. profit. U.S. manufacturing, as calculated by the Department, included:

(1) The cost of further manufacture in the United States;

(2) Freight from the U.S. port to the U.S. plant;

(3) Freight from the U.S. plant to the customer; and,

(4) U.S. repackaging.

Sandvik argues that the statute allows for the reduction of U.S. price by only the amount of profit associated with any increased value that results from a process of manufacture or assembly performed on the imported merchandise. As such, the two freight expenses and the repackaging expense should not have been included in the calculation of U.S. manufacturing (and, hence, the calculation of allocated profit) because these expenses do not result from a process of manufacture or assembly. The freight from the U.S. port to the U.S. customer should instead have been included in the cost of the redraw hollow. The freight from the U.S. plant to the customer is relevant to the absolute amount of profit, but not the allocation of profit. In support of its position, Sandvik cites Gray Portland Cement and Clinker from Japan (56 FR 12156, March 22, 1991) (*Portland Cement*), in which the Department rejected petitioner's argument that "delivery expenses associated with the delivery of [the merchandise which underwent further manufacturing] to the U.S. customer must remain as part of U.S. value added."

Petitioners argue that Sandvik's reading of the statute and the regulations is too narrow. They cite Certain Internal-Combustion, Industrial Forklift Trucks from Japan (57 FR 3167, January 28, 1992) (*Forklift Trucks*), in which the Department stated that "[s]ervicing commissions are considered a further cost of manufacturing because preparing, servicing, and delivering a forklift truck to the customer are all operations that add value to the forklift." Thus, the petitioners argue that "the Department has interpreted the statute to encompass all post-importation costs that 'add value' to the merchandise from the vantage of the first unrelated customer in the United States." Petitioners further dispute Sandvik's contention that repackaging and freight from the U.S. plant to the customer are not relevant to the allocation of profit. As necessary steps in the manufacture of the finished product or as integral components in the sales transaction, repackaging and delivery add value to the finished merchandise.

Department's Position: We believe that all costs incurred after a product has arrived in the U.S. should be attributed to the U.S. production costs; thus, we have included repackaging and freight from the U.S. port to the U.S. plant as elements in the further manufacturing or assembly costs. Therefore, we also included any profit associated with them in our calculation of U.S. profit to be allocated to further U.S. value added. This is consistent with our treatment of Toyota's further manufacturing in Forklift Trucks.

As for freight from the U.S. plant to the customer, we agree with Sandvik that such delivery expenses are not part of the U.S. value added, but rather are movement expenses incurred after all further manufacture is completed and all further value is added. This is different from Forklift Trucks where we considered Toyota's servicing commissions *in toto* as adding value to the forklift (the servicing commissions were paid by Toyota to cover freight from the U.S. port to the U.S. plant, repackaging, and freight from the U.S. plant to the customer). In this case, since freight from U.S. plant to the customer is a typical movement expense, we deducted it from USP, but did not include any associated profit in the U.S. value-added calculation (See Portland Cement, id.).

Comment 9: Sandvik argues that the Department should use a 60-day window rather than a 90-day window in determining contemporaneous model matches. Use of the 90-day window, Sandvik alleges, creates the possibility of distortions resulting from metal price fluctuations throughout the review period which would be minimized by using a 60-day window. Sandvik submits this argument in lieu of the claim it submitted in its questionnaire response that the Department should make a deduction for the alloy surcharge.

Petitioners object to Sandvik's request for two reasons. First, Sandvik provided no evidence of price fluctuations or attempted to show how the prices fluctuated. Second, in addition to failing to identify the distortion, Sandvik never explained why a 60/60-day window would eliminate it.

Department's Position: Sandvik's contention that the price of nickel and ferrochrome experienced significant volatility was unsubstantiated. Hence, we see no reason to deviate from our normal 90/60-day window.

Comment 10: Petitioners argue that in the preliminary results the Department correctly denied Sandvik's claim that the Department should compare U.S. sales to German sales of comparable quantity and should make a quantity discount adjustment when it was not able to do so. They allege that Sandvik has failed to show a clear correlation between price and quantity.

Department's Position: As Sandvik in its rebuttal brief withdrew its request for comparison of comparable quantities and a quantity discount adjustment, the point is moot. In these final results we compared U.S. sales to German sales without regard to quantity, as we did in the preliminary results.

Comment 11: Sandvik argues the Department should use a different "adjustment factor" for converting Sandvik's standard costs (in Swedish Generally Accepted Accounting Principles (GAAP)) into actual costs (in U.S. GAAP) for 340 and 345 merchandise. 340 merchandise is stock

standard production; 345 is non-stock standard production. The practical difference between the two is that 340 is produced in large volumes and in long production runs, while 345 is produced in response to a specific customer's order and in shorter production runs. Therefore, the relationship of the standard cost to the variance is different for 340 and 345 merchandise, and Sandvik tracks their costs separately.

Petitioners contend that Sandvik's argument amounts to a claim for a quantity discount adjustment, but Sandvik has failed to prove there are any cost differences between the two products, and has also failed to show how these two accounts are tied to specific production runs.

Department's Position: At verification, we verified Sandvik's proposed adjustment factor, and that 340 and 345 merchandise do incur different costs. Therefore, for these final results we have applied different adjustment factors to the 340 and 345 merchandise in converting standard cost into actual cost.

Comment 12: Sandvik and petitioners claim that there are numerous clerical errors in the programs used in calculating the preliminary results of review that should be corrected for the final results.

Department's Position: We agree, and have corrected all clerical errors for these final results. See the Department's file memorandum dated March 27, 1992.

Final Results of Review: Based on our analysis of the comments received and the correction of clerical errors, we determine that a final margin of 2.21 percent exists for Sandvik for the period December 1, 1989, through November 30, 1990.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Sandvik will be 2.21 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 2.21 percent. This rate represents the highest rate for any firm with shipments in the administrative review, other than those receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act and section 353.22 of the Department's regulations.

Dated: May 12, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-11835 Filed 5-19-92; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first Request for Panel Review of final determination of dumping made by the Deputy Minister of National Revenue (Customs and Excise) respecting machine tufted carpeting originating in or exported from the United States of America filed by Wundaweave Carpets, Inc. with the Canadian Section of the Binational Secretariat on April 29, 1992.

SUMMARY: On April 29, 1992, Wundaweave Carpets, Inc. filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determination of dumping made by the Deputy Minister of National Revenue (Customs and Excise) respecting machine tufted carpeting originating in or exported from the United States of America. The Binational Secretariat has assigned Case Number CDA-92-1904-01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on April 29, 1992, requesting panel review of the final determination described above.

Rule 35(1)(c) of the rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with rule 39 within 30 days after the filing of the first Request for

Panel Review (the deadline for filing a Complaint is May 29, 1992);

(b) A Party, investigating authority or interested person, including, in the case of a final determination made in Canada, any person that would be entitled to appear and be represented in a judicial review of the final determination, that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 15, 1992); and

(c) In the case of a final determination made in Canada, any person that would be entitled to appear and be represented in a judicial review of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review. (The deadline for filing a Notice of Appearance is June 15, 1992);

(d) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 14, 1992.

James R. Holbein,

United States Secretary FTA Binational Secretariat.

[FR Doc. 92-11836 Filed 5-19-92; 8:45 am]

BILLING CODE 3510-GT-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651); 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Program Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-142R. Applicant: Cornell University Medical College, 1300 York Avenue, New York, NY 10021. *Instrument:* Rapid Mixing Accessory, Model SFA-12. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the Federal Register of October 16, 1991.

Docket Number: 91-156R. *Applicant:* Columbia University, Biological Sciences, 500 Fairchild Building, New York, NY 10027. *Instrument:* (2) Micromanipulators, Models WR-90-R and WR-90-L. *Manufacturer:* Narishige Scientific Instruments, Japan. *Intended Use:* Original notice of this resubmitted application was published in the Federal Register of November 6, 1991.

Docket Number: 92-039. Applicant: University of Pittsburgh, Department of Environmental and Occupational Health, 260 Kappa Drive, Pittsburgh, PA 15238. *Instrument:* Mass Spectrometer, Model API I. *Manufacturer:* Perkin-Elmer Sciex Instruments, Canada. *Intended Use:* The instrument will be used in performing the following research projects:

1. Quantitation of xenobiotics and xenobiotic metabolites in biological fluids.
2. Peptide molecular weight analysis,
3. Molecular mass determination for proteins,
4. Molecular mass determination for oligonucleotides,
5. Quantitation and identification of nucleotides and nucleotide analogs and
6. Characterization and quantitation of oligosaccharides.

Application Received by Commissioner of Customs: March 18, 1992.

Docket Number: 92-052. *Applicant:* U.S. Geological Survey, National Center, Reston, VA 22092. *Instrument:* Mass Spectrometer, Model MAT 262. *Manufacturer:* Finnigan Corporation, Germany. *Intended Use:* The instrument will be used to determine the geological age of rocks and minerals and to establish the origin of rocks, minerals and fluids. This will involved analyzing samples after chemical separation of the elements (including U, Th, Pb, Rb, Sr, Sm, Nd, rare-earth elements, Lu, Hf, Re, and Os, etc.) and the data indicate the age of the materials and their source. *Application Received by Commissioner of Customs:* April 2, 1992.

Docket Number: 92-053. *Applicant:* Memphis State University, Center for Electron Microscopy, Life Sciences Building, room 101, Memphis, TN 38152. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used for evaluating various biological samples, including but not limited to the following:

Morphological components of the symbiotic interface in nitrogen-fixing symbiotic plant root nodules,
Cell ultrastructure of prokaryotes, including actinomycetes,
High pressure frozen/freeze substituted tissues,
Plant leaf ultrastructure,
Immunocytochemistry of the cytoskeleton in clover root hairs, and
Cell ultrastructure of tick salivary glands.

In addition, the instrument will be used for educational purposes in the courses Biology 7101/8101 Biological Electron Microscopy and Biology 7102/8102 Advanced Biological Electron Microscopy. *Application Received by Commissioner of Customs:* April 3, 1992.

Docket Number: 92-054. *Applicant:* University of Alabama at Birmingham, 609 Kracke Building, UAB Station, Birmingham, AL 35294-1924. *Instrument: Electron Microscope, Model CM 12. Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for morphological examination of biological material including labelling and analysis of elemental components in tissues. *Application Received by Commissioner of Customs:* April 3, 1992.

Docket Number: 92-055. *Applicant:* Geisinger Clinic, 100 N. Academy Avenue, Danville, PA 17822. *Instrument:* High Energy Xenon Flashlamp System, Model XF-10. *Manufacturer:* Hi Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used in medical research investigating the biochemical mechanisms of hormone action. Experiments will be conducted and the results will identify and characterize the biochemical processes that are regulated by a particular messenger molecule. This information will not only expand the understanding of the biochemical mechanisms of hormone action, but also identify specific biochemical steps that are appropriate for therapeutic interventions. In addition, the instrument will be used for educational purposes in a number of programs designed to provide research training for postdoctoral fellows, medical residents, and college students. *Application Received by Commissioner of Customs:* April 8, 1992.

Docket Number: 92-056. *Applicant:* University of Maryland, Department of Geology, Chemistry Building, room 0218, College Park, MD 20742. *Instrument:*

Mass Spectrometer, Model VG Sector 54. *Manufacturer:* VG Isotech Ltd., United Kingdom. *Intended Use:* The instrument will be used for measuring the isotopic ratios of Nd, Sr, Os, Pb and Li, in a wide range of rocks, minerals and fluids. The experiments will involve studies in a variety of geologic terranes and hydrologic systems in which the isotopic data will be used to characterize the sources of rocks, minerals or fluids, or to date the time of their formation or closure to migrations of elements with the given isotope system. In addition, the instrument will be used for educational purposes in the courses GEOL 799 Master's Research and GEOL 899 Dissertation Research. *Application Received by Commissioner of Customs:* April 8, 1992.

Docket Number: 92–057. *Applicant:* Carnegie Institution of Washington, Geophysical Laboratory, 5251 Broad Road, NW., Washington, DC 20015. *Instrument:* Automated Electron Microprobe, Model JXA8900/SCH. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for studies of the chemical composition, elemental distribution, and compositional zoning behavior of geologic materials. Experiments will consist of focussing a high voltage electron beam on a solid sample (usually a polished grain mount or thin section), generating characteristic X-rays, and measuring these X-rays quantitatively with wavelength and energy dispersive spectrometers. *Application Received by Commissioner of Customs:* April 8, 1992.

Docket Number: 92–059. *Applicant:* U.S. Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092. *Instrument:* Field Spectrometer w/Global Positioning System, Model PIMA II. *Manufacturer:* Integrated Spectronics Pty., Ltd., Australia. *Intended Use:* The instrument will be used in studies to identify rock, soil and vegetation composition variations and to map them using aircraft and satellite data. *Application Received by Commissioner of Customs:* April 13, 1992.

Docket Number: 92–060. *Applicant:* State University of New York, Research Foundation, Stony Brook, NY 11794. *Instrument:* (3) In-situ Large Volume Filtration Systems. *Manufacturer:* Challenger Oceanic Systems and Services, United Kingdom. *Intended Use:* The instrument will be used to measure the naturally occurring isotopes of thorium (including Th-234, Th-230 and Th-228) which are present in very low concentrations dissolved in seawater and on suspended particles. These radionuclides are one of a suite of geochemical tracers which will be studied in an Arctic shelf-slope environment. This work is part of a multidisciplinary study of the Northeast Water (NEW) Polynya (a region of reduced ice cover which recurs over the northeast coast of Greenland each spring and summer). One of the goals of the project is to define the role the polynya plays in modifying and enhancing organic carbon fluxes to shelf-slope systems in the Arctic. *Application Received by Commissioner of Customs:* April 14, 1992.

Docket Number: 92–061. *Applicant:* National Institute of Standards and Technology, 222/B364, Gaithersburg, MD 20899. *Instrument:* Mass Spectrometer, Model 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for high-precision measurement of isotopic ratios of carbon, oxygen, nitrogen, sulfur, and noble elements in isolated atmospheric trace gases (e.g., CO_2, N_2O, SO_2, Sr_6, Kr, Xe). The research will involve study of the mass fractionation factors that accompany the generation, manipulation, storage, and/or destruction of these gases. Furthermore, the instrument will provide the capability to develop an extensive gas isotope standards program, including the development of isotope dilution mass spectrometry as an independent and accurate method for certification of standard reference materials. *Application Received by Commissioner of Customs:* April 13, 1992.

Docket Number: 92–062. *Applicant:* Rutgers University, Department of Materials Science, P.O. Box 909, Piscataway, NJ 08855–0909. *Instrument:* X-Ray Camera. *Manufacturer:* Photonics, Ltd., United Kingdom. *Intended Use:* The instrument will be used in a research project involving construction of a prototype instrument to detect explosives on airplanes. The camera will be used to check the alignment of the various components inside the new machine. *Application Received by Commissioner of Customs:* April 21, 1992.

Docket Number: 91–167R. *Applicant:* The University of Texas Medical Branch, 301 University, Galveston, TX 77550. *Instrument:* 3–Dimensional Micromanipulators, Models WR–91–R and WR–91–L. *Manufacturer:* Narishige, Japan. *Intended Use:* Original notice of this resubmitted application was published in the **Federal Register** of December 9, 1991.

Docket Number: 92–063. *Applicant:* University of Nebraska-Lincoln, Water Center, 103 Natural Resources Hall, Lincoln, NE 68583–0844. *Instrument:* Mass Spectrometer, Model "OPTIMA". *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used in studies of gases, water, dissolved constituents and sediment extracts to determine the abundance of stable isotopes of hydrogen, nitrogen, oxygen and argon. The primary application of the IRMS will be the simultaneous determination of the Ar/N_2 ratio and the $^{15}N_2/^{14}N_2$ ratio in small samples of gases extracted from ground water. The instrument will also be used to determine the $^{15}N_2/^{14}$ in nitrate and ammonia dissolved in water samples. Another application of the instrument involves determination of the $^{18}O/^{16}O$ ratio and the $^{2}H/^{1}H$ in water itself. *Application Received by Commissioner of Customs:* April 24, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–11837 Filed 5–19–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold a meeting of its Squid-Mackerel-Butterfish Committee on June 10, 1992, beginning at 10 a.m., at the Holiday Inn, 45 Industrial Highway, Essington, PA. The Committee will discuss possible establishment of a control date for the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP).

On June 16–18, 1992, the Demersal Species Committee with Advisors will meet beginning at 9 a.m. on June 16. This meeting may be extended until 12 noon on June 18. The meeting will be held at the Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY. The Committee will discuss possible revisions to Amendment #2 to the Summer Flounder FMP, and to discuss the problem statement, overfishing definition, and possible management measures for the management of scup and black sea bass.

For more information, contact John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: May 14, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-11763 Filed 5-19-92; 8:45 am]

BILLING CODE 3510-22-M

Monitor National Marine Sanctuary Draft Revised Management Plan

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availabiity and Public Comment.

SUMMARY: Notice is hereby given on the availability of the draft revised management plan for the MONITOR National Marine Sanctuary. Through this draft revised management plan, the National Oceanic and Atmospheric Administration (NOAA) is seeking comments from relevant Federal and State agencies, as well as the diving and maritime archaeology communities, in NOAA's decision-making process for protecting and managing the resources of the MONITOR National Marine Sanctuary.

Following the public comment period, decisions will be made regarding recommended on-site management strategies. The existing regulations for the Sanctuary (15 CFR part 924) may be revised to reflect changes in the management strategy as a result of those comments received. If the regulations are revised, there will be another public comment period for those proposed changes.

Any person wishing to comment on the draft revised management plan may forward written comments to Ms. Annie Hillary, Acting Chief, Atlantic and Great Lakes Branch, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW, suite 714, Washington, DC 20235. Comments should be submitted no later than August 18, 1992.

(Federal Domestic Assistance Catalogue Number 11.429 Marine Sanctuary Program)

Dated: May 13, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-11591 Filed 5-19-92; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NMFS, Commerce.

ACTION: Issuance of Permit (P494).

On February 24, 1992, Notice was published in the **Federal Register** (57 FR 6315) that an application had been filed by Mr. Paul D. Jobsis, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California, 9500 Gilman Drive, La Jolla, California 92093, to obtain fifteen (15) locally stranded, rehabilitated, and/or captive-born harbor seals (*Phoca vitulina*) from Sea World to be maintained at Scripps Institute of Oceanography for scientific research. Stranded animals will be acquired and, following completion of the research, released into the wild or returned to Sea World, under authority of the Southwest Region Stranding Network. The study is designed to better understand how seals utilize their hemoglobin and myoglobin oxygen stores during diving and to document the differences in restrained dives and unrestrained dives.

Notice is hereby given that on May 13, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit and supporting documentation are available for review in the following offices by appointment:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (310/980-4015).

Dated: May 13, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-11752 Filed 5-19-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Marine Mammal Permit (P501).

On April 1, 1992, notice was published in the **Federal Register** (57 FR 11069) that an application had been filed by Dr. Raymond J. Tarpley, Assistant Professor, Department of Veterinary Anatomy, Texas A&M University, College Station, TX 77843, to collect tissue samples from up to 30 bowhead whales (*Balaena mysticetus*) taken during the Alaskan Eskimo subsistence harvest, import tissue samples from 50 beluga whales (*Delphinapterus leucas*) taken for subsistence purposes by the Inuit in Canada, and import tissue samples from harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*) and killer whales (*Orcinus orca*) found dead as a result of stranding.

Notice is hereby given that on May 13, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above importation, subject to certain conditions set forth therein.

The application and accompanying documentation satisfy the issuance criteria for scientific research permits and the requested activities are consistent with the purposes and policies of the MMPA and ESA. The research will further a *bona fide* scientific purpose that does not involve unnecessary duplication of other research.

Issuance of this Permit for the taking of bowhead whales as required by the Endangered Species Act of 1973 was bsed on a finding that such Permit; (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973.

Documents submitted in connection with this permit are available for review, by appointment, in the Permit Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713-2289);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141); and

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Bldg., 709 W. 9th Street, Juneau, AK 99802 (907/568-7221).

Dated: May 13, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92-11753 Filed 5-19-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Receipt of Applications for Permit (P129I and P120D).

Notice is hereby given that the Applicants have applied in due form for Permits to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (MMPA) (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543), and the regulations governing endangered fish and wildlife (50 CFR Parts 217–222).

Application No. 1 (P129I). Dr. Bruce R. Mate, Hatfield Marine Science Center, Oregon State University, Newport, OR 97365–5296, and Dr. Randall Davis, Texas A&M University, Galveston Marine Research Laboratory, 4700 Avenue "U", Bldg. 303, Galveston, TX 77551, request authorization, under authority of the MMPA and ESA, to tag a total of 50 sperm whales (*Physeter macrocephalus*) over a five-year period. No more than 10 whales will be tagged in a single calendar year; however, it may be necessary to approach an individual up to 10 times to assure appropriate position of the tag. Animals tagged during the fall will be retagged in the winter to determine longer-term seasonal characteristics of pod cohesion and site tenacity. Up to 440 whales may be unintentionally harassed while conducting these activities. The research will be conducted in the Gulf of Mexico.

Application No. 2 (P120D). Dr. Warren M. Zapol, Massachusetts General Hospital, Harvard Medical School, Department of Anesthesia, Fruit Street, Boston, MA 02114, requests authorization under the MMPA to take Weddell seals (*Leptonychotes weddelli*) for scientific research, over a two-year peirod on Ross Island in Antarctica, in the following manner:

(1) Up to 10 subadult males will be captured, instrumented and studied by (a) attaching a micro-computer monitor with integral depth gauge and velocity meter to measure depths of dives; (b) applying a transducer to the abdomen for radio-chromium red cell labelling and epinephrine infusion along with ultrasonic spleen scanning to explore the turnover of skeletal muscle oxygen stores in free diving seals by continuously monitoring and recording oxymyoglobin and oxyhemoglobin saturations; (c) applying a sonic probe to the abdomen to image the spleen in the diving hole before and after up to about 20 dives/seal to learn if the spleen injects red cells into the central circulation by contracting before or during a bout of diving; and (d) collecting blood samples via an aortic catheter and arterial oxygen saturation catheter. These seals will be sacrificed (5/year) to obtain the major organs including brain, heart, lung, spleen, muscle, and skin specimens for biochemical investigations;

(2) Up to 20 pregnant females will be captured and transported via sled to a hut fashioned into a protable operating room where (a) an EKG electrode will be implted in the fetus, attached to the mother and connected to a microprocessor recorder to record the fetal and maternal heart rates during resting and free diving conditions, correlate the fetal and maternal heart rates to the depth and duration of dives, and obtain information about the relationship of fetal and maternal heart rates that may help to determine how the fetus become aware of the maternal diving response; and (b) a radio transmitter will be attached on the hind flipper to allow for radio-location after pupping;

(3) Up to 10 newborns that were studied in-utero will be sacrificed in order to obtain muscle tissue samples to examine the seals metabolism before it has periods of air breathing at higher oxygen tensions; and

(4) Up to 35 seals may be inadvertently harassed while capturing animals for the above studies.

Written data or views, or request for a public heairng on these applications should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, U.S. Department of Commerce, 1335 East-West Hwy., Room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on a particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above applications are available for review by appointment in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Suite 7324, Silver Spring, Md 20910 (301/713–2289);

P129I. Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, VA 98115 (206/526–6150);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141); and

P120D. Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Dated: May 13, 1992.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–11754 Filed 5–19–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Modification: Kenneth Balcomb (P33D)

Modification No. 1

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 222.25 of the regulations governing endangered species permits (50 CFR part 222), Scientific Research Permit No. 733 issued to Mr. Kenneth Balcomb, Research Biologist, Center for Whale Research, Inc., 1359 Smuggler's Cove, Friday Harbor, WA 98250, to take, over a five-year period, 1500 humpback whales (*Megaptera novaeangliae*), 1000 blue whales (*Balaenoptera musculus*), 1000 fin whales (*B. physalus*), 500 killer whales (*Orcinus orca*), 100 right whales (*Balaena glacialis*) and 1000 Baird's beaked whales (*Berardius bairdii*) during photo-identification studies has been modified to clarify the definition of take and requirements for annual reports and to correct an error in the issuance of the original permit.

This modification becomes effective May 20, 1992.

The permit and modification are available for review, by appointment, in the Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/713–2289);

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Bldg., 709 W. 9th Street, Juneau, Alaska 99802 (907/568–7221);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE. BIN C15700,

Seattle, Washington 98115 (206/526–6150); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., Long Beach, California 90802–4213 (310/980–4015).

Dated: May 13, 1992.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 92–11756 Filed 5–19–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Correction of a Previous Directive and Permitting Entry of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

May 14, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs correcting a previous directive and permitting entry of certain textile products.

EFFECTIVE DATE: May 22, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice and letter to the Commissioner of Customs published in the **Federal Register** on April 21, 1992 (57 FR 14563) announced, among other things, amendments to export visa requirements for certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported from Pakistan on and after January 1, 1992. References in the letter to the Commissioner of Customs to merged Categories 359–O/659–O should be deleted. Categories 359–O and 659–O are not merged categories.

The existing visa arrangement between the Governments of the United States and Pakistan is being amended to include coverage of textile products in merged Categories 340/640, produced or manufactured in Pakistan and exported from Pakistan on and after January 1, 1992.

Merchandise in Category 369 which is produced or manufactured in Pakistan and exported from Pakistan during the period January 1, 1992 through April 22, 1992 shall be permitted entry if accompanied by either a 369–D, 369–F, 369–P, 369–R, 369–S or 369–O visa. Goods which had been visaed in Category 369–D which are exported from Pakistan on and after April 23, 1992 must be accompanied by either a 369–F or 369–P visa.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 48 FR 25257, published on June 6, 1983; and 52 FR 21611, published on June 8, 1987.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 14, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive, among other things, amends export visa requirements for certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported from Pakistan on and after January 1, 1992.

Effective on May 22, 1992, you are directed to amend the April 15, 1992 directive to delete reference to merged Categories 359–O/659–O [1]. Categories 359–O and 659–O are not merged categories.

You are directed to include the coverage of merged Categories 340/640, produced or manufactured in Pakistan and exported from Pakistan on and after January 1, 1992. Merchandise in merged Categories 340/640 may be accompanied by either the appropriate merged category or the correct category visa corresponding to the actual shipment.

Further, you are directed to permit entry of textile products in Category 369, produced or manufactured in Pakistan and exported from Pakistan during the period January 1, 1992 through April 22, 1992 which are accompanied by either a 369–D [2], 369–F [3], 369–P [4], 369–R [5], 369–S [6] or 369–O [7] visa. Category 369–D visas for goods which are exported from Pakistan on and after April 23, 1992, will no longer be accepted.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–11781 Filed 5–19–92; 8:45 am]

BILLING CODE 3510–DR–F

[1] Categories 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C).

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–F: only HTS number 6302.91.0045.

[4] Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–R: only HTS number 6307.10.2020.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 369–O: all remaining HTS numbers in Category 369.

DEPARTMENT OF DEFENSE

Defense Investigative Service

Privacy Act of 1974; Delete a Record System

AGENCY: Defense Investigative Service, DOD.

ACTION: Delete a record system.

SUMMARY: The Defense Investigative Service proposes to delete one record system notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed deletion will be effective May 20, 1992.

ADDRESSES: Send comments to the Chief, Office of Information and Public Affairs, Defense Investigative Service, 1900 Half Street, SW., Room 6115, Washington, DC 20324–1700.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hartig at (202) 475–1062.

SUPPLEMENTARY INFORMATION: The complete Defense Investigative Service system of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** as follows:

50 FR 22943, May 29, 1985 (DOD Compilation, changes follow)
55 FR 22390, Jun. 1, 1990
56 FR 12716, Mar. 27, 1991
56 FR 46163, Sep. 10, 1991
57 FR 1155, Jan. 10, 1992

57 FR 5421, Feb. 14, 1992
57 FR 10468, Mar. 26, 1992
57 FR 15305, Apr. 27, 1992

The deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of an altered system report.

Dated: May 13, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

V1-02

SYSTEM NAME: DIS Personnel Locator System (50 FR 22944, May 29, 1985)

Reason: The information contained in this system duplicates data provided by V4-01, Personnel Records.

[FR Doc. 92-11626 Filed 05-19-92; 8:45 am]

BILLING CODE 3810-01-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 92-608]

OMB Clearance Request for Notification of Employee Rights Concerning Payment of Union Dues or Fees

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for new OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for a new information collection requirement concerning Notification of Employee Rights Concerning Payment of Union Dues or Fees.

DATES: Comments may be submitted on or before June 19, 1992.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR subpart 22.15 and clause 52.222-18 are being added to require that contractors notify nonunion member employees of their rights concerning use of their unions dues.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents*, 385,000; *responses per respondent*, 1; *total annual responses*, 385,000; *preparation hours per response*, 1; and *total response burden hours*, 385,000.

Obtaining Copies of Proposals.

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-XXXX, FAR case 92-608, Notification of Employee Rights Concerning Payment of Union Dues or Fees, in all correspondence.

Dated: April 23, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-11740 Filed 5-19-92; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.159]

Special Studies Program; Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To support studies to evaluate the impact of the Individuals with Disabilities Education Act, including efforts to provide a free appropriate public education to children and youth with disabilities and early intervention services to infants and toddlers with disabilities.

Eligible Applicants: State educational agencies, and other State agencies designated by the Governor in each State for the purpose of administering an early intervention program under Part H of the Individuals with Disabilities Education Act (IDEA) are eligible for awards under these competitions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 327, as amended on October 22, 1991 (56 FR 54699-54701).

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 327.10(c) and 327.40(a) the Secretary gives an absolute preference to applications that the following priorities. The Secretary funds under these competitions only applications that meet one or more of these absolute priorities:

Absolute Priority 1—State Agency—Federal Evaluation Studies Projects (CFDA 84.159A)

This priority supports cooperative agreements that assess the impact and effectiveness of programs, policies, and procedures assisted under the Individuals with Disabilities Education Act (IDEA) in accordance with sections 618(d) (1) and (2) of the Act. An award under this competition provides not more than 60 percent of the total cost of the project, and the State agency receiving the award provides an amount not less than 40 percent of the total cost of the project.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Projects that:

(1) Assess the impact of State and local educational reform policies and practices such as school choice program, restructuring initiatives (e.g., site-based management, or accountability systems accompanying greater administrative and regulatory flexibility); or

(2) Measure student outcomes as indicators of effectiveness, and the impact of secondary programming options on student outcomes.

Absolute Priority 2—State Agency—Federal Evaluation Studies Projects (CDFA 84.159F)

This priority supports cooperative agreements that assess the impact and effectiveness of programs, policies, and procedures assisted under the Individuals with Disabilities Education Act (IDEA) in accordance with sections 618(d) (1) and (2) of the Act. An award under this competition provides not more than 60 percent of the total cost of the project, and the State agency receiving the award provides an amount not less than 40 percent of the total cost of the project.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not

receive competitive or absolute preference over other applications:

Projects that perform feasibility studies that develop the conceptual framework for an evaluation study about a specific issue or question concerning the impact and effectiveness of special education and related services, and to determine if the conceptual framework is workable.

The Secretary particularly encourages projects with topics that have significant potential, but that require preliminary study to determine feasibility related to identification of the issue, study designs, measurement, and analysis. The Secretary particularly encourages studies that (1) assess State and local educational reform policies and practices such as the impact of restructuring initiatives (e.g., site-based management, or accountability systems accompanying greater administrative and regulatory flexibility); and (2) measure student outcomes as indicators of effectiveness, and the impact of secondary programming options on student outcomes.

The Secretary particularly encourages projects that: (1) Conduct a literature review of the issue for study; (2) develop one or more conceptual frameworks that identify key dependent and independent variables (influencing factors) and their interrelationships; (3) identify project participants; (4) assess access to the project sample; (5) identify the availability and the quality of data sources for the variables identified in the conceptual framework; (6) develop a list of evaluation questions that can be addressed with these data; (7) identify the form in which data must be analyzed, displayed, and disseminated; (8) determine all of the relevant data found for the variable; and (9) identify the specific data collection strategies to gather the required data for variables that cannot be measured adequately with existing data. While collection and reporting of generalizable impact and effectiveness data are not expected for feasibility studies, the Secretary particularly encourages pilot tests of data collection instruments and procedures. The Secretary particularly encourages projects that, at the conclusion of the feasibility study, determine the results for the study design, measurement and analysis.

The Special Studies program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by seeking to improve services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement called for by the National Education Goals. National Education Goal 1 calls for all children to start school ready to learn, and National Education Goal 3 calls for American students to demonstrate competency in challenging subject matter and to learn to use their minds well.

SPECIAL STUDIES PROGRAM

[Application Notices for Fiscal Year 1992]

Title and CFDA No.	Applications available	Deadline for transmittal of applications	Available funds	Estimated size of awards	Estimated number of awards	Project period in months
State Agency/Federal Evaluation Studies Projects (84.159A).	May 22, 1992	June 30, 1992	$930,000	[1] $155,000	6	Up to 24.
State Agency/Federal Evaluation Studies Projects (84.159).	May 22, 1992	June 30, 1992	250,000	[2] 50,000	5	Up to 18.

[1] $155,000 is the estimated average size of award for the *entire* project period (up to 24 months).
[2] $50,000 is the estimated average size of award for the *entire* project period (up to 18 months).
NOTE: The Department is not bound by any estimates in this notice.

For Applications or Information Contact: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202-2640. Telephone: (202) 732-1099. Deaf and hard of hearing individuals may call (202) 732-6153.

Program Authority: 20 U.S.C. 1418.

Dated: May 14, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Service.

[FR Doc. 92-11762 Filed 5-19-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.026S]

Extending the Closing Date for Transmittal of Applications for Closed-Captioned Daytime Programming Under the Educational Media Research, Production, Distribution, and Training Program for Fiscal Year (FY) 1992; Part F of the Individuals With Disabilities Education Act

Purpose: On April 8, 1992, a notice of final funding priorities for Certain New Direct Grant Awards for FY 1992 and 1993 was published in the **Federal Register** at 57 FR 12080. This notice contained a final priority for Closed-Captioned Daytime Programming at 57 FR 12092, with a closing date notice of May 21, 1992 at 57 FR 12104.

The purpose of this notice is to clarify the scope of this priority and to extend the closing date for applications. The stated purpose of this priority is to support closed-captioning of a diversity of "daytime programming broadcast nationally." Paragraph (d) under "Project Design" states that projects must "[o]btain agreement from major commercial or cable networks to permit captioning of their programs."

Questions have been raised by potential applicants as to the relationship between the project design limitation in paragraph (d) and the general purpose statement. The principal question raised is whether the published priority covers daytime syndicated programming available nationally on local stations that are not either major commercial networks or major cable networks. Confusion has arisen because from a technical standpoint, this category of programming is not broadcast or shown (cable) by a major commercial or cable network, although it may be seen throughout the country, and hence applicants for this type of programming cannot meet the requirement in paragraph (d).

The requirement set forth in paragraph (d) establishes that this priority was not intended to include any programming that is not broadcast or shown (cable) by a major commercial or cable network. However, because of the confusion regarding the priority, the Secretary is extending the closing date notice for transmittal of applications for FY 1992 awards in order to allow potential applicants more time to submit their applications. Only the deadline date for this priority—Closed-Captioning Daytime Programming—has been changed by this announcement.

Deadline for Transmittal of Applications: The new deadline for submission of applications is June 12, 1992.

For Applications or Information Contact: Joseph Clair, Office of Special Education and Rehabilitative Services, Division of Educational Services, 400 Maryland Ave., SW., room 4662, Switzer Building, Washington, DC 20202–2734. Telephone: (202) 732–4503; Deaf or hard-of-hearing individuals may call (202) 732–1169.

Authority: 20 U.S.C. 1451, 1452.

Dated: May 14, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–11807 Filed 5–19–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Grant; Financial Assistance Award to Resources Enterprises, Inc.

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of a noncompetitive financial assistance application for an award of a grant.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a one (1) year grant to Resources Enterprises, Inc., 360 Wakara Way, Salt Lake City, Utah 84108, with an associated budget of approximately $103,127; this budget includes a 10.3% participant cost share (Anticipated DOE funding is $92,522 and Cost Share is $10,605).

FOR FURTHER INFORMATION CONTACT: Mary C. Spatafore, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4253, Procurement Request No. 21–92–MC29254.000.

SUPPLEMENTARY INFORMATION: The pending award involves (1) conducting an assessment of the commercial potential of gob gas and coalbed methane resources, and (2) evaluating alternative gas utilization systems. While considerable research has been performed on the various methodologies for utilizing gob gas and coalbed methane, the data have not been assessed with respect to the best options and/or alternatives for utilizing these previously-wasted natural resources. The objective of this effort is to utilize an energy resource that is being wasted, improve the environment through reduction of atmospheric methane emissions, and enhance coal mining economics through commercialization of a mining by-product. The grantee has conducted an intensive investigation and evaluation of utilization options and brings a significant amount of experience and expertise to the project. DOE support of this activity will enhance the public benefits and accelerate the accomplishment of the effort; furthermore, the DOE knows of no other entity which is planning to conduct the specifically proposed project. Overall, the public will benefit as DOE support will expedite this research technology through commercialization of the coalbed methane utilization. In addition, the research will enhance the use of previously-wasted national resources, gob gas and coalbed methane.

Issued: May 12, 1992.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 92–11822 Filed 5–19–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–519–000 et al.]

Florida Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Co.

[Docket No. ER92–519–000]

May 8, 1992.

Take notice that Florida Power & Light Company (FPL) on May 1, 1992, tendered for filing (1) a revised daily capacity charge for sales under Service Schedule B (Short Term Firm Interchange Service) of FPL's Contracts for Interchange Service with Florida Municipal Power Agency, Florida Power Corporation, Fort Pierce Utilities Authority, City of Gainesville, City of Homestead, Jacksonville Electric Authority, Utility Board of City of Key West, Kissimmee Utility Authority, City of Lakeland, Utilities Commission, City of New Smyrna Beach, Orlando Utilities Commission, Reedy Creek Improvement District, City of St. Cloud, Seminole Electric Cooperative, Inc., City of Starke, Tampa Electric Company, City of Vero Beach and City of Tallahassee; (2) a revised Capacity Reservation Charge for sales under FPL's Agreements to provide Short Term Power and Energy with Utilities Commission, City of New Smyrna Beach and Utility Board of City of Key West; and (3) a revised daily capacity charge for sales under Service Schedule B–S (Short-Term Firm Interchange Service) of FPL's Supplementary Agreement Number One to the contract for Interchange Service with Seminole Electric Cooperative, Inc. and Florida Municipal Power Agency, together with accompanying Cost Support Schedules C, F, F Supplement, G, C–S, F–S, F–S Supplement and G–S. FPL states that the revised capacity charges have been calculated in accordance with the provisions of Service Schedule B and Service Schedule B–S and FPL's Agreements to provide Short Term Power and Energy and represent an updating of the currently effective capacity charges to reflect more current costs.

FPL requests an effective date of May 1, 1992, and therefore requests waiver of the Commission's notice requirements.

According to FPL, a copy of this filing was served upon all of the above named parties and the Florida Public Service Commission.

Comment date: May 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Co.

[Docket No. ER92–515–000]

May 8, 1992.

Take notice that on May 1, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the Florida Municipal Power Agency (FMPA) of 10 megawatts of capacity and energy from Tampa Electric's Big Bend Station coal-fired generating resources. The Letter of Commitment is submitted as a supplement to Service Schedule D under Tampa Electric's agreement for interchange service with FMPA.

Tampa Electric proposes an effective date of the later of June 1, 1992, or the date that wheeling arrangements are completed, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on FMPA and the Florida Public Service Commission.

Comment date: May 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Edison Sault Electric Co.

[Docket No. ES92-38-000]

May 8, 1992.

Take notice that on May 1, 1992, Edison Sault Electric Company filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than $10 million of unsecured short-term debt on or before December 31, 1993, with a final maturity date no later than December 31, 1994.

Comment date: May 31, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. KES Kingsburg, L.P.

[Docket No. QF86-155-003]

May 8, 1992.

On May 4, 1992, KES Kingsburg, L.P. (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to certain technical information. No determination has been made that the submittal constitutes a complete filing.

Comment date: May 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. New York State Electric & Gas Corp.

[Docket No. ER92-520-000]

May 8, 1992.

Take notice that New York State Electric & Gas Corporation ("NYSEG") on May 1, 1992, tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.12 (1991), as an Initial Rate Schedule, an agreement with the Town of Massena, New York Electric Department. The agreement provides for the sale of up to 30 MW of electric generating capacity and associated energy by NYSEG to Massena. Service under this agreement is scheduled to commence on July 1, 1992.

NYSEG requests that July 1, 1992 be allowed as the effective date of the filing.

NYSEG served copies of the filing upon the New York State Public Service Commission, the New York Power Authority; and the Town of Massena, New York.

Comment date: May 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Century Power Corp.

[Docket No. ER92-514-000]

May 8, 1992.

Take notice that on May 1, 1992, Century Power Corporation filed a notice of cancellation of its Rate Schedule No. 5 for service to San Diego Gas & Electric Company which is no longer being rendered. The notice of cancellation is to be effective as of May 1, 1992.

Comment date: May 27, 1992, in accordance with Standard E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER92-518-000]

May 8, 1992.

Take notice that Entergy Services, Inc., as agent for Entergy Power, Inc. (Entergy Power), on May 1, 1992, tendered for filing an energy sale agreement between Entergy Power and Oglethorpe Power Corporation. Entergy Power requests an effective date of July 1, 1992.

Comment date: May 27, 1992, in accordance with Standard E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER92-517-000]

May 8, 1992.

Take notice that on May 1, 1992, Southern Company Services, Inc., acting on behalf of Alabama Power Company and Mississippi Power Company, tendered for filing a Long Term Transmission Service Agreement between Entergy Power, Inc. and Alabama Power Company, Mississippi Power Company and Southern Company Services, Inc. dated April 27, 1992. The agreement provides for the provision of transmission services by Alabama Power Company and Mississippi Power Company to deliver 100 MW of capacity and associated energy from Entergy Power, Inc. to Oglethorpe Power Corporation, which is located in the State of Georgia.

Southern Company Services, Inc. requests that the agreement be allowed to become effective on July 1, 1992.

Comment date: May 27, 1992, in accordance with Standard E at the end of this notice.

9. Public Service Co. of New Hampshire

[Docket No. ER92-481-000]

May 11, 1992.

Take notice that Public Service Company of New Hampshire ("PSNH"), on April 30, 1992, tendered for filing supplemental information regarding the Agreement For Sale of Capacity and Energy Between Public Service Company of New Hampshire and The Connecticut Light And Power Company and Western Massachusetts Electric Company ("Agreement"). PSNH filed the Agreement with the Commission on April 23, 1992.

Comment date: May 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. UNITIL Power Corp.

[Docket No. ER92-511-000]

May 11, 1992.

Take notice that on April 30, 1992, UNITIL Power Corporation tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

A. Statement of all sales and billing transactions for the period January 1, 1991 through December 31, 1991 along with the actual costs incurred by UNITIL Power Corporation by FERC account.

B. UNITIL Power Corporation rates billed from January 1, 1991 to December 31, 1991 and supporting rate development.

Comment date: May 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas Gas and Electric Co.

[Docket No. ER92-508-000]

May 11, 1992.

Take notice that on April 30, 1992, Kansas Gas and Electric Company (KG&E), 120 E. First, Wichita, Kansas, 67201, a wholly owned subsidiary of The Kansas Power and Light Company (KPL), tendered for filing notice that it is the successor to Kansas Gas and Electric Company and that it adopts, ratifies, and makes its own, in every respect all applicable rate schedules, and supplements thereto previously filed with the Federal Energy Regulatory Commission and the Federal Power Commission, its predecessor, by Kansas Gas and Electric Company, its predecessor.

The notice of succession was filed as a result of the merger on March 31, 1992, of Kansas Gas and Electric Company into KCA Corporation, a wholly owned subsidiary of The Kansas Power and Light Company, and the simultaneous

renaming of KCA Corporation as Kansas Gas and Electric Company.

Copies of the filing were served upon KG&E's jurisdictional customers and the Kansas Corporation Commission.

Comment date: May 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. National Electric Associates Limited Partnership

[Docket No. ER90-168-008]

May 11, 1992.

Take notice that on April 24, 1992, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering Paragraph (L) of the Commission's March 20, 1990 order in this proceeding. 50 FERC ¶ 61,378 (1990). Copies of NEA's informational filing are on file with the Commission and are available for public inspection.

13. Chicago Energy Exchange of Chicago, Inc.

[Docket No. ER90-225-008]

May 11, 1992.

Take notice that on April 24, 1992, Chicago Energy Exchange of Chicago, Inc. (Energy Exchange) filed certain information as required by Ordering Paragraph (L) of the Commission's April 19, 1990 order in this proceeding, 51 FERC ¶ 61,054 (1990). Copies of Energy Exchange's informational filing are on file with the Commission and are available for public inspection.

14. Public Service Co. of Colorado

[Docket No. ER92-507-000]

May 11, 1992.

Take notice that Public Service Company of Colorado (PSCo), on April 30, 1992, tendered for filing in accordance with 18 CFR 35.13(a)(ii) of the Commission's Rules and Regulations, the Power Purchase Agreement between PSCo and WestPlains Energy.

Under the terms of the Power Purchase Agreement, Public Service will supply Firm Power and Energy service to WestPlains as authorized under FERC Electric Tariff No. 13, and will supply new Peaking Power and Energy Service to WestPlains. The Agreement also establishes provisions for system regulation.

Copies of the filing were served upon PSCo jurisdictional customers and to PSCo state jurisdictional regulators, the Public Utilities Commission of the State of Colorado, and the Office of Consumer Council.

Comment date: May 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER92-516-000]

May 11, 1992.

Take notice that Entergy Services, Inc., as agent for Entergy Power, Inc. (Entergy Power), on May 1, 1992, tendered for filing a unit power sale agreement between Entergy Power and Oglethorpe Power Corporation. Entergy Power requests waiver of the Commission's cost support requirements under § 35.12 or § 35.13 of the Commission's Regulations, to the extent they are otherwise applicable to this filing.

Comment date: May 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Co. of New Hampshire

[Docket No. ER92-510-000]

May 11, 1992.

Take notice that on April 30, 1992, Public Service Company of New Hampshire ("PSNH") filed an Amendment to its Service Agreement No. 16 under FERC Electric Tariff, First Revised Volume No. 1 for non-firm transmission service to Vermont Electric Generation and Transmission Cooperative, Inc. ("VEG&T"). PSNH states that the purpose of the Amendment is to establish VEG&T as an Eligible Entity under the Settlement Agreement in Docket Nos. ER89-207-004 and EL91-45-000 currently pending before the Commission. The Amendment is proposed to become effective on January 2, 1992.

Comment date: May 27, 1992, in accordance with Standard Paragraph E end of this notice.

17. Fale-Safe, Inc.

[Docket No. ER92-509-000]

May 11, 1992.

Take notice that Fale-Safe, Inc. on April 30, 1992, tendered for filing as an initial rate schedule:

(a) Long Term Power Sale Agreement and Long Term Transmission Service Agreement, as executed by and between Portland General Electric Company ("PGE") and San Diego Gas and Electric Company ("San Diego") on November 5, 1985 (collectively, the "Contracts"),

(b) the PGE-Lessee Agreement, dated as of December 30, 1985, by and between PGE and Fale-Safe, with Definitions: Appendix A to the Participation Agreement,

(c) Fale-Safe's Management Agreement with PGE, dated May 30, 1986,

(d) PGE's Letter Agreement with San Diego, dated April 10, 1989.

This filing is submitted in compliance with Ordering Paragraph D of the "Order Rejecting Request for Amendment to Average System Cost Determination and Accepting Rates for Filing, "Portland General Electric Co., 59 FERC ¶ 61,005 (1992). The Commission accepted the Contracts for filing as Portland General Electric Company, Rate Schedules FERC Nos. 49 and 50, in Portland General Electric Co., 33 FERC ¶ 61,459 (1985), and on March 13, 1990, by delegated authority accepted the Letter Agreement for filing as Supplement No. 2 to Rate Schedule FERC No. 49. Fale-Safe has requested an effective date of January 1, 1989, the date on which sales and service to San Diego commenced.

Copies of this filing were served on San Diego, PGE, and the California Public Utilities Commission.

Comment date: May 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Co.

[Docket No. ER92-533-000]

May 12, 1992.

Take notice that on May 7, 1992, Louisville Gas and Electric Company (LG&E) tendered for filing Rate Schedule GSS—Generation Sales Service; Rate Schedule T—Firm Transmission Service; and Rate Schedule CT—Coordination Transmission Service.

Under the Generation Sales Service rate schedule LG&G may sell up to 75 MW of firm generation capacity for a duration of greater than one year and non-firm generation capacity and energy to the extent such capacity and energy are available from LG&E's current generation resources.

Under the Firm Transmission Service rate schedule, LG&E would provide firm service to utilities, qualifying cogeneration and small power production facilities, and independent power producers requesting such service. If capacity is not available on its bulk transmission system to provide such service, LG&E would make a reasonable effort to install the facilities necessary to provide service. The customer would be required to pay for the cost of such facilities.

Under the Coordination Transmission Service rate schedule, LG&E would provide coordination transmission service to utilities, qualifying cogeneration and small power production facilities, and independent power producers requesting such service. The priority and quality of transmission service under Rate Schedule CT would be subordinate to service provided under Rate Schedule T.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: May 26, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11755 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2146-058 Alabama]

Alabama Power Co.; Availability of Environmental Assessment

May 13, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license at the Coosa River Project to allow Alabama Power Company (licensee) to grant an easement to the Kimberly-Clark Corporation. The easement will allow the grantee to construct an oxygen diffuser system in the Coosa River in order to meet state water quality standards.

The staff of OHL's Division of Project Compliance and Administration prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NW., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11746 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9175-013 New York]

Rivers Electric Company, Inc.; Availability of Environmental Assessment

May 14, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license for Eddyville Falls Hydroelectric Project.

The amendment includes constructing the entire project at the south end of the dam, rather than the north end as originally licensed. The powerhouse would contain seven syphon-intake, fixed-blade propeller units, rated at 200 kilowatts (kw) each, rather than four "bulb" type turbine-generator units, rated at 348 kw each. Total project capacity would change from 1392 kw to 1400 kw. A 1,200-foot-long transmission line would be located on the north side. Rondout Creek is a tributary of the Hudson River in Ulster County, New York.

The staff of OHL's Division of Project Compliance and Adminstration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell

Secretary.

[FR Doc. 92-11799 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-06451T Oklahoma-16]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

May 13, 1992.

Take notice that on May 11, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Cherokee Group Formation underlying a portion of Roger Mills County qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area consists of Section 6, Township 15 North, Range 22 West.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Cherokee Group Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc 92-11745 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-49-005]

Arkla Energy Resources, a Division of Arkla, Inc.; Compliance Filing

May 14, 1992.

Take notice that on May 11, 1992, Arkla Energy Resources ("AER"), a division of Arkla, Inc. tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with the Commission's Order Approving Uncontested Settlement, certain tariff sheets to become effective June 1, 1992.

AER states that on March 2, 1992, AER filed a proposed Stipulation and Agreement ("Settlement") to resolve all of the issues regarding recover of Order No. 528 contract settlement costs. The Settlement provided, among other things, that within ten days following the date on which the Settlement shall become effective by final Commission order, AER shall file tariff sheets to be effective on the first day of the month following the expiration of thirty days after the date of filing, and that it would refund to its customers through a volumetric credit all amounts collected pursuant to the CSC rate in effect prior to the effective date of the Initial CSC Charge. The Settlement further indicated that the CSC Credit would be returned

over a twelve-month period, provided that the credit amount does not exceed the corresponding CSC Charge in effect.

Accordingly, AER has calculated its CSC Rate Credit for the ten months remaining in the initial twelve month recovery period which commenced on April 1, 1992. Such calculation results in a CSC Rate Credit of 1.61 cent per MMBtu, effective June 1, 1992, which effectively reduces AER's sales and transportation commodity rates by 1.61 cent per MMBtu.

AER states that copies of the filing were served upon all interstate pipeline system transportation and sales customers of AER and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11797 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-131-007]

Carnegie Natural Gas Co.; Report of Refunds

May 14, 1992.

Take notice that on May 7, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing with the Federal Energy Regulatory Commission ("Commission") a Refund Report in accordance with the Commission's order issued in the captioned proceeding on February 26, 1992. Carnegie states that the report summarizes the refunds Carnegie made to its customers on and after April 22, 1992.

Carnegie states that copies of the filing were sent to its affected customers and to all parties on the official service list compiled in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before May 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11793 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-638-008]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 14, 1992.

Take notice that CNG Transmission Corporation ("CNG"), Gas Tariff, Original Volume No. 2A. These sheets are proposed to become effective November 1, 1991:

Substitute Original Sheet Nos. 452, 453, 470 and 471

CNG states that the purpose of this filing is to comply with the Commission orders in these proceedings, authorizing CNG to provide transportation service in Phase II of the ANR Project. The substitute tariff sheets correct certain rates set forth in CNG's proposed Rate Schedules X-73 and X-75 of Volume 2A of CNG's FERC Gas Tariff, for transportation service to Kamine/Besicorp South Glens Falls, L.P., and Sterling Partners, L.P.

CNG states that copies of its filing were served upon parties to the captioned proceeding, as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before May 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11792 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-5-[illegible]2-002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 14, 1992.

Take notice that CNG Transmission Corporation ("CNG"), on May 7, 1992, withdrew the following tariff sheets previously proposed for its FERC Gas Tariff, Original Volume No. 1:

First Revised 2nd Revised Sheet No. 50
Third Revised Sheet No. 50
Substitute Third Revised Sheet No. 50

CNG states that the purpose of this filing is to remove proposed tariff sheets which contain an incorrect computation of refunds related to direct take-or-pay charges assessed to CNG by Texas Gas Transmission Corporation. CNG states that it will file a revised tariff sheet to replace the withdrawn sheets, in the near future.

CNG states that copies of the filing were served upon CNG's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11794 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-143-000 and EL92-21-000]

Florida Power & Light Co.; Initiation of Proceeding and Refund Effective Date

May 13, 1992.

Take notice that on April 10, 1992, the Commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL92-21-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL92-21-000 will be 60 days after

publication of this notice in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11744 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-10-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

May 14, 1992.

Take notice that on April 29, 1992, Mississippi River Transmission Corporation (MRT) tendered for filing First Revised Seventy-Fifth Revised Sheet No. 4 and First Revised Thirty-Fourth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective May 1, 1992.

MRT states that the purpose of the out-of-cycle filing is to request waiver of the Commission's regulations, in particular § 154.305(d) and § 154.308(c), in order to allow MRT to reflect an increase of 31.18 cents per MMBtu in the commodity cost of purchased gas from PGA rates effective April 1, 1992 in Docket No. TQ92-9-25-000, and to adjust its commodity surcharge rate from the current level of (36.12¢) per MMBtu to (47.10¢) per MMBtu. MRT states that the impact of the instant filing on its Rate Schedule CD-1 rates is an increase of 20.20¢ per MMBtu in the CD-1 and SGS-1 commodity charge.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and on the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 19, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11800 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-7-002]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 14, 1992.

Take notice that on May 11, 1992, Southern Natural Gas Company (Southern) tendered for filing the following revised sheet to its FERC Gas Tariff, Sixth Revised Volume No.1:

Third Revised Sheet No. 45E.01

Southern states that the proposed tariff sheet and supporting information are being filed in compliance with the Commission's March 31, 1992 order in Docket No. TA92-1-7-000. Consistent with that order, Southern has revised its PGA tariff language to ensure that Southern's sales customers are not allocated any of the fuel used and unaccounted for gas costs associated with the transportation services. Southern has proposed an effective date of April 1, 1992 for its proposed tariff sheet consistent with the effective date of its underlying filing in this proceeding.

Southern states that copies of the filing were served upon Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11795 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-85-006]

Trunkline LNG Co.; Report of Refunds

May 14, 1992.

Take notice that on April 3, 1992, Trunkline LNG Company (TLC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report in accordance with the Commission's letter order dated February 18, 1992 in the above-referenced proceeding. TLC states that the report summarizes the repayment amount TLC made to Trunkline Gas Company (Trunkline) on March 19, 1992.

TLC states that copies of the filing were sent to TLC's affected customer and to Trunkline's affected customers and respective state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before May 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-11791 Filed 5-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

May 14, 1992.

Take notice that Trunkline Gas Company (Trunkline) on May 8, 1992 tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Ninety-Second Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is June 1, 1992.

Trunkline states that the instant filing reflects a commodity rate increase of 0.21¢ per Dt in the projected purchased gas cost component.

The above-referenced tariff sheet is being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchase Gas Adjustment Clause) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, Original Volume No. 1. Trunkline states that copies of this filing have been served on all jurisdictional sales customers and applicable state commissions.

Trunkline further states that on May 6, 1992, the Commission issued a letter order rejecting under § 385.2001(b) of the Commission's regulations, Trunkline Gas Company's (Trunkline) regularly scheduled quarterly PGA filed April 28, 1992 in Docket No. TQ92-3-30-000. The letter order stated that "[i]n Schedule D101, Trunkline left a blank space

between the Record ID field and the sequence No. field."

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–11796 Filed 5–19–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA88–62–000]

Wisconsin Electric Power Co.; Order Establishing Hearing Procedures

Issued May 14, 1992.

On February 4, 1992, the Chief Accountant issued a report under delegated authority to Wisconsin Electric Power Company (Company) summarizing the results of an audit performed by the Office of the Chief Accountant's Division of Audits. (Wisconsin Electric Power Company, 58 FERC ¶ 62,121 (1992)). The Chief Accountant noted the Company's disagreement with one item included in the report, regarding the accounting and fuel adjustment clause billings for coal mine reclamation costs. (58 FERC at 63,350, 63–357–60). The Chief Accountant requested the Company to advise the Commission whether it consented to the disposition of the questions involved under the shortened procedure provided by part 41, of the Commission's regulations, 18 CFR part 41 (58 FERC at 63,350).

On March 2, 1992, the company advised the Commission that it consented to the shortened procedures provided under § 41.3 of the Commission's regulations, 18 CFR 41.3. On March 30, 1992, the Commission issued an Order Instituting Proceedings under part 41 of the Commission's regulations. On April 22, 1992, the Company filed a Motion for Termination of Shortened Procedures Under part 41 and for Hearing under part 385. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

It is ordered: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly sections 205, 206 and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR, chapter I), a public hearing shall be held concerning the appropriateness of System Energy's practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rule of Practice and Procedure.

(C) This order shall be promptly published in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 92–11798 Filed 5–19–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

Science Advisory Board, Drinking Water Committee; Open Meeting, June 1–2, 1992

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Drinking Water Committee (DWC) will meet on June 1–2, 1992 at the Howard Johnsons Hotel, 2650 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting will begin at 9 a.m. on both days and will end no later than 5 p.m. on each day. The meeting is open to the public and seating is on a first-come basis.

At this meeting, the Committee will review and revise a number of ongoing Committee and Subcommittee reports (these include: VIRALT; Criteria Document Reviews for Chlorine, Chloramines, Chlorine Dioxide, Cryptosporidium, and Ozone; and the review of the Drinking Water Research Program at the Health Effects Research Laboratory). Under the provisions of the SAB procedural guidance on the public release of draft materials, copies of these draft reports will not be publicly available before or during the meeting. As soon as an individual draft represents a clear consensus of Committee opinion on a specific issue, a copy of that draft will be available. These documents are expected to be submitted to the SAB's Executive Committee on July 27–28, 1992 for final review and approval.

There are no scheduled presentations nor are any review issues scheduled. For details concerning this meeting, including a draft agenda, and the future availability of draft reports, please contact Mr. Robert Flaak, Assistant Staff Director, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–6552.

Dated: May 13, 1992.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 92–11839 Filed 5–19–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No	MM docket No.
A. Bible Broadcasting Network, Inc., Fort Smith, AR.	BPED–900816MA	92–107
B. National Christian Network, Inc.; Fayetteville, AR.	BPED–900823MA	
Issue heading and applicants 1. Environmental, A, B		

Applicant, city and state	File No	MM docket No.
2. 307(b)—Noncommercial Educational, A, B 3. Contingent Comparative—Noncommercial Educational FM, A, B 4. Ultimate, A, B		
II		
A. Jeffrey Scott; Bethany Beach DE. B. Eicher Communications, Inc.; Bethany Beach DE. *Issue heading and applicants* 1. Contingent Environmental, A, B 2. Comparative, A, B 3. Ultimate, A, B	BPH-91021ME BPH-91021MF	92-106
III		
A. Holy Spirit Harvest Church, Inc.; Macon, GA. B. Warner Robins Christian Academy; Warner Robins, GA. C. Georgia Foundation for Public Broadcasting, Inc.; Griffin, GA. D. Georgia College; Milledgeville, GA. *Issue heading and applicants* 1. (See Appendix), A 2. Financial Qualifications, B 3. Environmental Impact, A, B 4. 307(b)—Noncommerical Educational, A, B 5. Contingent Comparative—Noncommercial Educational, A, B 6. Ultimate, A, B	BPED-870417MB BPED-8800329MA BPED-880419MF (previously returned) BPED-880420MX (previously returned)	92-110

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (telephone 202-452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. To determine whether Holy Spirit Harvest Church, Inc. (A) is qualified to be a noncommercial, educational FM licensee.

[FR Doc. 92-11736 Filed 5-19-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCING INSTITUTIONS EXAMINATION COUNCIL

[Docket No. S-221]

Study on Regulatory Burden

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Request for public comment; notice of public meetings.

SUMMARY: The Federal Financial Institutions Examination Council (the FFIEC or Council) is seeking public comment regarding the regulatory burden imposed on insured depository institutions. The Council is required to conduct a study of regulatory burden by section 221 of the Federal Deposit Insurance Corporation Improvement Act of 1991.[1] The Council is now soliciting public comment, as well as announcing its intention to hold public meetings, in order to assist it in the conduct of the study.

DATES: Comments must be received no later than July 10, 1992.

ADDRESSES: Comments, which should refer to Docket No. S-221, may be mailed to the Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037, to the attention of Mr. Joe M. Cleaver, Executive Secretary. Comments will be available for public inspection and copying in suite 200 between 9 a.m. and 5 p.m., weekdays.

FOR FURTHER INFORMATION CONTACT: On behalf of the Council: Joe M. Cleaver, Executive Secretary; or Keith J. Todd, Assistant Executive Secretary (202/634-6526); FFIEC. Thomas A. Durkin, Regulatory Planning and Review Director, Office of the Secretary (202/452-2326); or Michael J. O'Rourke, Senior Attorney, Legal Division (202/452-3288); both of the Federal Reserve Board.

On behalf of the Board of Governors of the Federal Reserve System: Martha Bethea, Deputy Associate Director, Division of research and Statistics (202/452-3181); or Ellen Maland, Assistant Director, Division of Consumer and Community Affairs (202/452-3667).

On behalf of the Federal Deposit Insurance Corporation: Robert F. Miailovich, Associate Director, Division of Supervision (202/898-6918); or Lisa Stanley, Senior Attorney, Office of the General Counsel (202/898-7494).

On behalf of the Office of the Comptroller of the Currency: Raija Bettauer, Director; or Eugene Cantor, Senior Attorney, Legislative and Regulatory Analysis Division (202/874-5090).

On behalf of the Office of Thrift Supervision: Jerauld C. Kluckman, Deputy Assistant Director for Policy, Specialized Programs (202/906-5775); or Deborah Kennedy, Program Analyst, Policy (202/906-7324).

On behalf of the Department of the Treasury: Gordon Eastburn, Director, Financial Institutions Policy (202/566-5337) (after May 15, 1992: 202/622-2730); or Laurie Schaffer, Attorney Advisor, Office of the General Counsel (Banking and Finance) (202/566-8056) (after May 15, 1992: (202/622-1958).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") mandated that the Council report to the Congress on the regulatory burden imposed on insured depository institutions.

In particular, section 221 of FDICIA requires that the Council, in consultation with interested parties, accomplish four tasks:

- First, review the policies, procedures, recordkeeping and documentation requirements that are used to monitor and enforce compliance with:

a. All laws under the jurisdiction of the Federal banking agencies; [2] and

b. All laws affecting insured depository institutions under the jurisdiction of the Secretary of the Treasury.

[1] Public Law 102-242, 105 Stat. 2236, 2305 (1991).

[2] For purposes of this study, the terms "insured depository institution" and "Federal banking agency" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

• Second, determine whether such policies, procedures and requirements imposed unnecessary burdens on insured depository institutions.

• Third, identify any revisions to these procedures, policies and requirements that could reduce unnecessary burdens. The revisions identified, however, may not:

a. Diminish compliance with or enforcement of consumer laws in any respect; or

b. Endanger the safety and soundness of insured depository institutions.

• Fourth, and finally, submit to the Congress no later than December 19, 1992, a report describing those revisions that could reduce unnecessary regulatory burden on depository institutions.

In accordance with section 221's direction that the Council consult "with individuals representing insured depository institutions, consumers, community groups, and other interested parties" regarding this study, the Council is now soliciting public comment on the regulatory burden imposed on insured depository institutions. The Council as well as announcing its intention to conduct a series of public meetings, during which interested parties will be given an opportunity to express their views on regulatory burden.

In that regard, the Council has reviewed the appropriate scope of the section 221 study. The council has determined that the apparent purpose and intended focus of the study is not the examination of, and the development of proposed revisions to, the overall statutory scheme governing financial institutions. Rather, it appears that the Council is to accept the statutory scheme devised by the Congress as given, and instead examine the manner in which the Federal banking agencies and the Treasury Department have implemented that scheme, such as by means of regulations, policy statements, procedures, recordkeeping requirements and the like.

Although proposed statutory reforms to ease regulatory burden do not appear to be the intended or primary focus of this study, the Council recognizes that suggestions regarding appropriate measures in this regard may well arise. The Council has concluded that such suggestions are appropriately included in some form in the report to be submitted to the Congress.

II. Request for Public Comment

In addition to comments generally on the nature and scope of regulatory burden imposed on depository institutions, the Council in particular seeks:

• Specific suggestions on how to comply with particular statutory mandates while, at the same time, easing the regulatory burden imposed on depository institutions;

• Alternative forms, reports, procedures, etc., that would simplify institutions' reporting and recordkeeping without diminishing compliance with applicable laws, or endangering the ability of the agencies to monitor an institution's condition to ensure safety and soundness.

• Information regarding the burden of regulatory compliance relative to the size of a depository institution, as well as any appropriate ameliorative measure to ease any undue burden in that regard.

• Any studies of regulatory burden concerning depository institutions; particularly, studies containing quantitative data relating to the costs and time attributable to regulatory compliance for depository institutions. In that regard, commenters are asked to specify, to the extent possible, those costs/burdens attributable to statutory requirements, and those attributable to agency discretion.

Comments previously submitted in response to the agencies' recent regulatory review initiatives will be made available to the Council for its consideration in the course of this study. Accordingly, those comments need not be resubmitted in response to this request for comment.

III. Notice of Public Meetings

As part of its process of consulting with the public, the Council also is announcing its intention to convene several public meetings at which interested parties may personally express their views on the regulatory burden imposed on insured depository institutions. In order to ensure geographically diverse representation at the meetings, the Council has decided to hold public meetings in Kansas City, Missouri, San Francisco, California, and Washington, DC.

The public meeting in Kansas City will be held on June 18, 1992, at the Federal Reserve Bank of Kansas City, 925 Grand Avenue, Kansas City, Missouri 64198. The meeting will begin at 9 a.m., c.d.t.

The public meeting in San Francisco will be held on June 19, 1992, at the Federal Reserve Bank of San Francisco, 101 Market Street, San Francisco, California 94105. The meeting will begin at 9 a.m., p.d.t.

The public meeting in Washington will be held on June 25, 1992, at the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. The meeting will begin at 9 a.m., e.d.t.

Remarks at the public meetings will be presented to panels consisting of a Presiding Officer (the Executive Secretary of the Council or his designee) and other panel members representative of the agencies comprising the Council. The public meetings will be transcribed and information regarding procedures for obtaining a copy of the transcripts will be announced at the public meetings.

Persons wishing to speak at these meetings should submit a written request by June 5, 1992, to Matthew Maciejewski, Research Assistant, Office of the Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 (facsimile: 202/452–3819). The request should include the following information:

1. Name, address, telephone number (and facsimile number, if available);

2. Designation of chosen meeting location; and a

3. Brief description of the nature of ones expected remarks.

On the basis of these requests, staff assisting in the study will prepare a schedule for persons wishing to appear, which will be available as soon as practicable after June 8, 1992, from Matthew Maciejewski.

Copies of any written remarks may, but need not, be filed with the Executive Secretary before a person's presentation.

Dated: May 14, 1992.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 92–11765 Filed 5–19–92; 8:45 am]

BILLING CODE 6210–01–M

Reporting of Information on Small Business and Small Farm Lending by Banks, Thrifts, and U.S. Branches and Agencies of Foreign Banks

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Request for comment.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) is proposing certain changes to the Reports of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks, to the Thrift Financial Report filed by savings associations, and to the Report of Assets

and Liabilities of U.S. Branches and Agencies of Foreign Banks filed by U.S. branches and agencies of foreign banks. These changes involve the annual collection of information on the number and amount outstanding of loans to small businesses and to small farms, and the estimated amount of income and net charge-offs on these loans. The proposed changes are to fulfill the requirements of section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Act). The information that would be collected also may assist the Federal Reserve Board in satisfying the requirements of section 477 of the Act. The proposed effective date for these reporting changes is the June 30, 1993, report date.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Comments should be sent to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037 or delivered to the same address between the hours of 9 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Gary Christensen, National Bank Examiner, Chief National Bank Examiner's Office, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, (202) 874–5190.

FRB: Thomas R. Boemio, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, (202) 452–2982.

FDIC: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898–8906 or J. William Via, Jr., Counsel, Legal Division, (202) 898–3733, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Thomas A. Loeffler, Assistant Director for Supervisory Operations, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5762.

SUPPLEMENTARY INFORMATION:

Provisions of Section 122

Section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("Act") requires that the Federal Reserve Board ("FRB"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), and the Office of Thrift Supervision ("OTS") (collectively, the "federal banking agencies" or the "agencies") annually collect in the "reports of condition" such information from insured commercial banks, savings banks, savings associations, and insured U.S. branches of foreign banks (collectively, "insured depository institutions") on small business and small farm lending as the agencies may need to assess the availability of credit to these sectors of the economy. The term "reports of condition" includes for insured commercial banks and FDIC-supervised savings banks, the Reports of Condition and Income; for savings associations, the Thrift Financial Report; and for U.S. branches and agencies of foreign banks, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (collectively, these reports are referred to as the "reports of condition"). The statute indicates that the types of information that the agencies may collect in the reports of condition may include:

(a) The total number and dollar amount of commercial loans and commercial mortgage loans to small businesses,

(b) Charge-offs and interest and fee income on commercial loans and commercial mortgage loans to small businesses, and

(c) Agricultural loans to small farms.

The Act does not explicitly require the agencies to collect any specific information with respect to loans to small businesses or agricultural loans to small farms.

Provisions of Section 477

Another section of the Act, section 477, requires the Federal Reserve Board to collect and publish, on an annual basis, information on the availability of credit to small businesses. According to the statute, the information shall, to the extent practicable:

(a) Include information on commercial loans to small businesses, agricultural loans to small farms, and loans to minority-owned small businesses,

(b) Be given for categories of small businesses determined by annual sales of small businesses and for small businesses in existence for less than a year, and

(c) Be given for each geographic region of the United States.

Section 477 does not require the Federal Reserve Board to collect all or any of these items on the reports of condition. Indeed, the section directs the Federal Reserve Board to take into consideration the need to minimize reporting costs on financial institutions when deciding what information can be practically collected. While the requirements of section 477 are not tied to reporting requirements of section 122, the information collected on the reports of condition under section 122 could be used as a source for some of the information that the Federal Reserve might need for the annual publication required by section 477. The Federal Reserve may be able to collect some information to compile the annual publication on credit available to small businesses from other sources, such as existing or new surveys, that would impose less reporting costs on financial institutions.

At this time the FFIEC has not proposed collecting data on minority-owned businesses or data on small businesses in existence for less than a year on the reports of condition. The FFIEC requests comments on the feasibility and costs of collecting information on these two types of loans on the reports of condition. Alternatively, less burdensome means of collecting information on these types of loans may be available and the FFIEC requests suggestions on what these other means might be as well as comments on their associated costs and burdens.

In addition, the FFIEC is not proposing to collect information on the geographic distribution of small businesses borrowers on the reports of condition. In the interest of reducing reporting burden, the FFIEC suggests that the geographic location of the lending institution is a suitable proxy that may be used in assessing the availability of credit in specific regions of the United States. The FFIEC seeks comments on using the geographic location of the lending institution as a suitable proxy for such an assessment.

Proposed Report Schedule

In order for the federal banking agencies to implement section 122 of the Act, the FFIEC is proposing to introduce a new schedule to the reports of condition to collect selected balance sheet and income statement information related to loans to small businesses and small farms. All insured depository institutions, regardless of asset size, would be required to complete this schedule. The language of section 122 does not appear to provide the agencies with the ability to exempt certain classes or sizes of insured depository institutions from this reporting requirement.

In addition, although section 122 requires insured depository institutions to report information on small business and small farm loans, the FFIEC is proposing to collect this information from both insured and noninsured U.S. branches and agencies of foreign banks.

Under the principle of national treatment, reporting requirements imposed on the U.S. operations of U.S. depository institutions should also be extended to the U.S. operations of foreign banks. Furthermore, to the extent that noninsured U.S. branches and agencies of foreign banks provide credit to small businesses and small farms, the collection of data on these loans from noninsured entities may assist the Federal Reserve in preparing the annual publication on the availability of credit to small businesses that is required by section 477.

Essentially, the proposed schedule would collect data on the number, the amount outstanding, estimated charge-offs (net of recoveries), and estimated interest and fee income on loans to small businesses and small farms. These are the types of information that section 122 suggests that the agencies may collect on loans to small businesses. In the absence of any statutory guidance on the collection of data on loans to small farms, the FFIEC is proposing that the agencies should collect the same types of information on loans to small farms as on loans to small businesses and requests comments on the feasibility and costs of collecting such information. In addition, the number and amount outstanding of loans to small businesses would be reported for three size categories of small businesses. This would permit the Federal Reserve to use the reports of condition to collect part of the information necessary to publish the report required by section 477 which suggests that, to the extent practicable, the information for categories of small businesses be determined by annual sales.

Definition of Small Business and Small Farm

Section 122 does not specify an operational definition of small business or small farms to be used for classifying loans on the reports of condition. For some lenders, a small business is one that is independently operated, probably with fewer than 5 or 10 employees, and annual sales of $100,000 or less. Others define small businesses to include firms with several million dollars in annual sales and up to 500 employees that rely heavily on local depository institutions for credit and have limited or no access to capital markets.

A meaningful definition of small business depends on many factors, including the form of business structure (corporation, partnership, proprietorship), the industry, and the purposes for which the information will be used. A comprehensive analysis of small business finance would need to take into account a far wider range of market factors and business characteristics than can feasibly be reported by depository institutions. Indeed, to avoid extraordinary reporting burdens, the agencies believe it is important to select a simple and concise definition of small business and small farm.

After considering several measures, including number of employees, asset size, net worth and sales, the agencies are proposing to use "annual sales volume" as the measure by which institutions should classify the size of business and farm borrowers. Evidence suggests that lenders are likely to have information on sales volume while other measures may not be as readily available. Moreover, section 477 of the Act makes reference to categories of small businesses determined by annual sales. Sales volume typically has been used in surveys that focused on small business programs.

The FFIEC recognizes that depository institutions of different asset sizes may have their own internal definitions of small businesses and small farms that differ from the definitions proposed below. However, for the reports of condition, a standard definition is needed for each term to ensure that the data are comparable. The FFIEC is proposing to define a small business as a business with annual sales of less than $10 million, and to define a small farm as a farm with annual sales of less than $500,000. Based on 1987 data from Dun's Market Indicator File, which covers approximately 5 million business firms, almost 98 percent of all nonagricultural, nonfinancial business firms have annual sales of less than $10 million. As a result, the FFIEC believes that $10 million in annual sales would be an appropriate upper limit in defining the size of a small business.

For the same reasons mentioned above, the FFIEC is proposing that annual sales also be used as the basis upon which to define a small farm. With respect to the dollar size of a small farm, the FFIEC relied on available data from the Census of Agriculture that suggested that few farms have annual sales of more than $1 million. In addition, agency staff discussions with representatives of bank trade associations indicated that, in their view, small farms were those with annual sales of less than $500,000.

The FFIEC specifically seeks comment on the appropriate amount of sales that should be used as the basis upon which to define a small business and a small farm. In addition, because sales for farms and many small businesses may vary considerably from year to year, the FFIEC seeks comment on whether depository institutions should be given the option of using a three-year average of annual sales to determine the size for small businesses or for small farms.

For purposes of reporting loans to small businesses and small farms, this proposal would require that depository institutions determine whether a business or farm is small based on the most recent annual sales of the business or farm at the time the loan is made, renewed, rolled over, or otherwise undergoes a credit decision, whichever is most recent. Similarly, the size category of a small business also would be fixed at the time the loan is made, renewed, rolled over, or otherwise undergoes a credit decision, whichever is most recent. The FFIEC seeks comments on whether or not this basis is reasonable. In this way, depository institutions would not necessarily be required to review each loan to a business or farm each year to determine whether the annual sales of the borrower still fell within the small business or small farm definition or whether, for loans to small businesses, the small business's annual sales had changed to that of a different size category. However, the FFIEC seeks comment on whether, for loans outstanding at the effective date of the schedule (proposed to be June 30, 1993), depository institutions should be required to determine the annual sales of their business and farm borrowers when these loans were originated, renewed or rolled over, whichever is most recent, or whether they should be permitted to make this determination based on the borrower's most recent annual sales.

Under the FFIEC's proposal, information will be collected separately for two general categories of loans: "Loans to small businesses" and "Loans to small farms." Loans to small businesses will consist of (1) commercial and industrial loans and (2) loans secured by nonfarm nonresidential properties. Loans to small farms will consist of (1) to finance agricultural production and others loans to farmers and (2) loans secured by farmland (including farm residential and other improvements). Each of these latter four categories of loans would be defined in the same manner as in the present loan schedule (Schedule RC-C) of the bank Reports of Condition and Income.

With respect to loans to small businesses, the FFIEC is proposing that depository institutions separately report the number and amount outstanding of loans for three size categories of small businesses: those with annual sales of

less than $250,000, those with annual sales of $250,000 up to $1 million, and those with annual sales of $1 million up to $10 million. While section 122 of the Act does not specifically recommend a breakdown of the total number and amount outstanding of loans to small businesses, the three size categories included in the FFIEC's proposal are intended to assist the Federal Reserve Board in complying with section 477. Collecting loan information for more than one category of small businesses also should provide some flexibility to users of the data who may have different opinions of what constitutes a small business or who may have an interest in small businesses of particular sizes.

Nevertheless, the FFIEC recognizes that a requirement to report the proposed three-way breakdown of loans to businesses with annual sales of less than $10 million is more burdensome than reporting only totals for all businesses with annual sales of less than $10 million. This is particularly true for a smaller depository institution that may make few, if any, loans to business borrowers with annual sales above $10 million. Consequently, the FFIEC specifically requests comment on the additional burden (in terms of cost and/or hours of time to compile the data) associated with reporting loans to small businesses using the proposed three-way annual sales breakdown rather than reporting such loans without a breakdown by annual sales. The FFIEC also would like to know if there are alternative small size categories, other than those proposed, that would reduce the reporting burden.

As an alternative to the proposed collection of the number and amount outstanding of loans to three categories of small businesses based on annual sales, the FFIEC is interested in receiving comment on whether depository institutions would be able to provide reasonable estimates of the percentage of their total loans to small businesses (that is, loans to businesses with less than $10 million in annual sales) that have been made to small businesses with annual sales in each of the three smaller proposed size categories. If so, a comparison between the reporting burden of this alternative and the burden of reporting the actual amount of loans to each of the three size categories of small businesses would be helpful to the agencies.

Interest and Fee Income

The FFIEC is proposing to collect estimated amounts for interest and fee income on loans to small businesses (in total without any breakdowns by size of business) and on loans to small farms, as well as estimated amounts for net charge-offs on these types of loans. The estimates of income and net charge-offs would be for the one year period ending on the report date (currently proposed to be June 30th). Estimates of selected income-related information have been collected in the commercial bank Reports of Condition and Income for several years in an effort to minimize the reporting burden on reporting institutions. The collection of reasonable estimates for interest and fee income and net charge-offs on small business and small farm loans may represent an appropriate method for balancing reporting burden with the statutory recommendation that this information be collected.

Although the proposal would require all depository institutions to report their estimated interest and fee income on small business and small farm loans, the FFIEC notes that banks with less than $25 million in total assets have never been required to provide a breakdown of their interest and fee income on loans by loan category in their Reports of Condition and Income. These small banks have been exempt from reporting loan income breakdowns in order to minimize their reporting burden. The FFIEC seeks comment on the amount of burden that a requirement to report small business and small farm loan income will impose on banks with less than $25 million in total assets and whether the present small bank exemption should be extended to the reporting of estimates of loan income from loans to small businesses and small farms in the proposed new Call Report schedule.

In addition, because they are only a part of a larger depository institution, U.S. branches and agencies of foreign banks do not report income or charge-off data in the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. The FFIEC requests comment on the burden that will be imposed on U.S. branches and agencies by a requirement to report estimates of small business and small farm loan income and net charge-offs and the basis upon which some or all U.S. branches and agencies might be exempted from reporting such estimates.

Thrift Reporting

While the OTS recognizes the statutory requirement to collect the data cited in this notice, the OTS also recognizes the limited role of savings associations in commercial and agricultural lending. In this context, the OTS solicits comment on the reporting burden for thrift institutions associated with the proposed data collection.

Savings associations are restricted by regulation from investing in excess of 10 percent of assets in unsecured commercial and industrial loans. This type of lending for private sector savings associations amounted to $16.4 billion as of December 31, 1991, accounting for 1.9 percent of total assets, compared to $27.1 billion as of March 31, 1990, or 2.5 percent of total assets. In contrast, as of December 31, 1991, commercial banks held $447.2 billion of commercial and industrial loans (to U.S. addressees). The OTS solicits comment on the level of detail for this type of lending that would serve the purposes of the statutory data collection from thrift institutions.

Furthermore, for savings associations, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 limited the total amount of each institution's nonresidential real property loans to 400 percent of its total capital. The OTS believes that most of these loans are made to property owners whose primary source of income is from the rental of the property rather than loans made to businesses offering the property as security for the loan. The OTS requests comment on (1) the nature of lending secured by nonresidential real estate most common to thrift institutions, (2) the applicability of the proposed sales levels to businesses with revenue measured by rental income, and (3) whether the businesses represented by lending on nonresidential real estate are "small businesses" as the term is commonly defined.

OTS does not currently collect data separately on the amount of agricultural loans held by thrift institutions and solicits comment on the necessity for a separate data collection on agricultural loans to small farms given the limited extent to which the thrift industry is involved in this type of lending.

Effective Date

The FFIEC is proposing that the new reporting requirements for small business and small farm lending will take effect with the reports of condition to be prepared as of June 30, 1993. This would provide time for institutions to develop systems for collecting and reporting the new information. The proposed information would be reported as of each June 30th thereafter. Comment is requested on whether this quarter-end report date or some other quarter-end date is the most appropriate for collecting the information each year.

The FFIEC are requesting comments on the proposed schedule to collect

information on loans to small businesses and small farms that is presented below. Depository institutions that would be subject to the proposed reporting requirement should indicate whether and, if so, the extent to which such information is readily available at their institutions. Furthermore, it would be useful to the Examination Council if such respondents could provide estimates of the cost of providing such information (both initial start-up cost and regular maintenance cost) and the amount of time that their institutions would reasonably need to make appropriate adjustments to their loan information systems (whether automated or manual) so that the information can be collected.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the current Reports of Condition and Income required of all insured commercial banks and FDIC-supervised savings banks, the Thrift Financial Report required of savings associations, and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks required of U.S. branches have been submitted to, and approved by, the Office of Management and Budget (OMB). (OMB Control Numbers: Reports of Condition and Income—for OCC, 1557–0081; for FRB, 7100–0036; for FDIC, 3064–0052; Thrift Financial Report—OTS, 1550–0023; and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks—FRB, 7100–0032) The final version of the proposed changes that are the subject of this request for comment, which will be developed after consideration of the comments received, will be submitted by each agency to OMB for its review.

The proposed reports of condition schedule follows:

Schedule—Selected Balance Sheet and Income Statement Items Related to Loans to Small Businesses and Small Farms (Loans made at domestic offices to U.S. addressees)

Part I. Loans to Small Businesses

Dollar amounts in thousands	Commercial and industrial loans				Loans secured by nonfarm nonresidential properties			
	(Column A) Number	(Column B) Amount outstanding			(Column C) Number	(Column D) Amount outstanding		
		Bil	Mil	Thou		Bil	Mil	Thou
1. Loans to small businesses with annual sales of:								
a. Less than $250 thousand								
b. $250 thousand up to $1 million								
c. $1 million up to $10 million								
d. Total (sum of items 1.a. through 1.c.)								

Part II. Estimated Income and Charge-Offs on Loans to Small Businesses

Dollar amounts in thousands	(Column A) Commercial and industrial loans			(Column B) Loans secured by nonfarm nonresidential properties		
	Bil	Mil	Thou	Bil	Mil	Thou
1. Estimated interest and fee income (July 1 of previous year through June 30 of current year)						
2. Estimated charge-offs net of recoveries (July 1 of previous year through June 30 of current year)						

Part III. Agricultural Loans to Small Farms

Dollar amounts in thousands	Loans to finance agricultural production and other loans to farmers				Loans secured by farmland (including farm residential and other improvements)			
	(Column A) Number	(Column B) Amount outstanding			(Column C) Number	(Column D) Amount outstanding		
		Bil	Mil	Thou		Bil	Mil	Thou
1. Loans to small farms with annual sales of up to $500,000Estimated charge-offs net of recoveries (July 1 of previous year through June 30 of current year)								

Part IV. Estimated Income and Charge-Offs on Agricultural Loans to Small Farms

Dollar amount in thousands	(Column A) Loans to finance agricultural production and other loans to farmers			(Column B) Loans secured by farmland (including farm residential and other improvements)		
	Bil	Mil	Thou	Bil	Mil	Thou
1. Estimated interest and fee income (July 1 of previous year through June 30 of current year)						
2. Estimated charge-offs net of recoveries (July 1 of previous year through June 30 of current year)						

Dated: May 14, 1992.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 92-11766 Filed 5-19-92; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200165-006.

Title: The Maryland Port Administration and Ceres Corporation.

Parties:

The Maryland Port Administration ("MPA")

Ceres Corporation ("Ceres")

Synopsis: The Agreement reduces Ceres acreage on certain lots and increases the acreage on other lots at MPA.

Agreement No.: 224-200661.

Title: Port Authority of New York & New Jersey/Maersk Terminal Agreement.

Parties:

The Port Authority of New York and New Jersey

Maersk Container Service Company, Inc. ("Maersk")

Synopsis: The Agreement provides for the use and occupancy by Maersk of approximately 2.23 acres of open area in the immediate vicinity of the Maersk Container Terminal.

Dated: May 14, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-11780 Filed 5-19-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Firstar Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 12, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstar Corporation, Milwaukee, Wisconsin, and F.W.S.F. Corporation, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Geneva Capital Corporation, Lake Geneva, Wisconsin, and thereby indirectly acquire Citizens National Bank of Lake Geneva, Lake Geneva, Wisconsin.

Board of Governors of the Federal Reserve System, May 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-11774 Filed 5-19-92; 8:45 am]

BILLING CODE 6210-01-F

Gerauld, Donna, William, and Margaret Hopkins, and Amy (Hopkins) Blaylock; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 9, 1992.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Gerauld, Donna, William, and Margaret Hopkins, and Amy (Hopkins) Blaylock, Downers Grove, Illinois; to acquire an additional 15 percent, for a total of 24 percent, of the voting shares

of Andover Bancorp, Inc., Andover, Massachusetts, and thereby indirectly acquire Andover Bank, Andover, Massachusetts.

Board of Governors of the Federal Reserve System, May 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-11775 Filed 5-19-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0213]

Animal Drug Export; Ivomec® SR Bolus for Cattle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., has filed an application requesting approval for export to the Netherlands for repackaging and shipment to the United Kingdom for sale in the United Kingdom and Ireland of the animal drug Ivomec® SR Bolus for Cattle.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of food animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person below.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8646.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065-0914, has filed an application requesting approval for export to the Netherlands for repackaging and shipment to the United Kingdom for sale in the United Kingdom and Ireland of the animal drug Ivomec® SR Bolus for Cattle. The product is intended for use in cattle for treatment and control of endo- and ectoparasites. The application was received and filed in the Center for Veterinary Medicine on May 4, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 1, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: May 13, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-11778 Filed 5-19-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92F-0189]

Ashai Denka Kogyo K. K.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ashai Denka Kogyo K. K. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)2-ethylhexyl phosphite as an antioxidant and/or a stabilizer in polypropylene articles intended for contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4320) has been filed by Asahi Denka Kogyo K. K., c/o 1002 Pennsylvania Ave. SE., Washington, DC 20003. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2,2'-methylenebis (4,6-di-*tert*-butylphenyl)2-ethylhexyl phosphite as an antioxidant and/or stabilizer in polypropylene articles intended for contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 8, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-11846 Filed 5-19-92; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Antiviral Drugs Advisory Committee

Date, time, and place. June 3, 1992, 8:30 a.m., and June 4, 1992, 8 a.m., Holiday Inn-Silver Spring Plaza, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, June 3, 1992, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 6 p.m.; open public hearing, June 4, 1992, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 12 m.; closed committee deliberations, 12 m. to 4 p.m.; Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda--Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 26, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 3, 1992, the committee will discuss new drug application (NDA) 50-689 (Mycobutin (rifabutin), Adria Laboratories) for use as prophylaxis against mycobacterium avium infections in persons with AIDS. On June 4, 1992, the committee will discuss research methodologies being developed to assess the use of CD4 cell count as a surrogate marker in studies of drugs to treat human immunodeficiency virus infection (HIV), and the status of the drug supply and new product development for the treatment of tuberculosis.

Closed committee deliberations. On June 4, 1992, the committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. June 15 and 16, 1992, 8:30 a.m., Holiday Inn-Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 15, 1992, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 6 p.m.; open public hearing, June 16, 1992, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; Anna J. Baldwin, Center for Biologics Evaluation and Research (HFB-5), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301-295-8226.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda--Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 8, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 15, 1992, the committee will discuss safety and efficacy trials of acellular pertussis vaccines. The committee will also review the intramural research programs of the Laboratories of Pertussis, Bacterial Polysaccharides, and Molecular and Developmental Immunology, in the Division of Bacterial Products; and the Laboratories of Respiratory Viruses, and DNA Viruses, in the Division of Virology. On June 16, 1992, the committee will discuss an investigational new drug application for a gene therapy protocol (Viagene, Inc.) to treat human immunodeficiency virus infection. The committee will also discuss a Japanese encephalitis virus vaccine (Connaught Laboratories).

Closed committee deliberations. The committee will discuss information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy relevant to the intramural scientific program. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(6)).

Oncologic Drugs Advisory Committee

Date, time, and place. June 18 and 19, 1992, 9 a.m., Pooks Hill Marriott, Bethesda, MD.

Type of meeting and contact person. Closed committee deliberations, June 18, 1992, 9 a.m. to 12 m.; open committee discussion, 12 m. to 5 p.m.; open public hearing, June 19, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda--Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 10, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 18, 1992, the committee will discuss new drug application (NDA) 20-229 (Leustatin™, for injection (2-chloro-deoxy-β-D-adenosine), R. W. Johnson Pharmaceutical Research Institute) for treatment of patients with hairy cell leukemia. On June 19, 1992, the committee will discuss NDA 20-212 (Zinecard™ (dexrazoxane for injection, Adria Laboratories)) for preventing/reducing the incidence and severity of cardiomyopathy associated with doxorubicin administration.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public

hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 13, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92–11777 Filed 5–19–92; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1992.

Name: Scientific Review Subcommittee of the Advisory Commission on Childhood Vaccines.

Date and Time: June 17, 1992, 3:30 p.m.—5:30 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: This Subcommittee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Claims court, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Subcommittee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Subcommittee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Subcommittee will also be the first line of study for all outside studies and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: This Subcommittee will discuss and make recommendations to the Commission for criteria for adding

new vaccines for coverage to the Vaccine Injury Table, and receive an update on the Section 313 study.

Name: Financial Review Subcommittee of the Advisory Commission on Childhood Vaccines.

Date and Time: June 17, 1992, 3:30 p.m.—5:30 p.m.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Subcommittee reviews quarterly with the administration staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund. If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full commission and if accepted, can be forwarded to the Secretary.

Agenda: The Subcommittee will discuss: (1) Trust Fund finances, and (2) Status of spending for pre-1988 awards, (3) estimates of receipts posted to the Trust Fund by type of vaccine and compared to awards paid to date by the Program by type of vaccine, and (4) the history of the vaccine surtax provisions.

Name: Advisory Commission on Childhood Vaccines.

Date and Time: June 17, 1992, 8:30 a.m.– 3:15 p.m., June 18, 1992, 8:30 a.m.– 12 p.m.

Place: Conference Rooms G & H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the full commission will include, but not be limited to: The routine Program reports, reports from the National Vaccine Program and the National Vaccine Advisory Committee (NVAC), reports from the ACCV Subcommittees, and presentation from representatives of parent groups, the medical community, and the legal community on the criteria for adding new vaccines to the Vaccine Injury Table.

Public comment will be permitted at the respective subcommittee meetings on June 17 before they adjourn in the evening; the end of the full Commission meeting on June 17; and also before noon of the second day June 18. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Matthew Barry, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Rooms G & H before 10 a.m., June 17 and 18. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Mr. Matthew Barry, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, room 7–02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Agenda Items are subject to change as priorities dictate.

Dated: May 14, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–11737 Filed 5–19–92; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Ad Hoc Speech and speech Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Ad Hoc Speech and Speech Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on May 28, 1992. The meeting will take place 1 p.m. to 3 p.m. in Conference Room 3C07, building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of speaker phones.

The meeting will be open to the public from 1 p.m. to 1:10 p.m. for a discussion of Subcommittee business. Attendance by the public will be limited to the space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 1:10 p.m. until adjournment for the discussion and recommendation of individuals to serve on a scientific panel to update the speech and speech disorders section of the research Plan. These discussions could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the subcommittee's meeting and a roster of members may be obtained from Ms. Monica M. Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, (301) 402–1129, upon request.

Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Other Communicative Disorders.

Dated: May 11, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–11968 Filed 5–19–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities

with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531, *et seq.*]:

PRT-768303

Applicant: Anthony Sardella, Lilburn, GA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by A.G. Spaeth, P.O. Box 5412, Walmer, Doornboom, Republic of South Africa, for the purpose of enhancement of propagation of the species.

PRT-768301

Applicant: Danny Sardella, Lilburn, GA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by A.G. Spaeth, P.O. Box 5412, Walmer, Doornboom, Republic of South Africa, for the purpose of enhancement of propagation of the species.

PRT-768293

Applicant: Zoological Society of San Diego, San Diego, CA.

The applicant requests a permit to import one captive-born female orangutan (*Pongo pygmaeus abelii*) from the Adelaide Zoo, Australia, for the purpose of captive breeding.

PRT-768090

Applicant: Abdul Al-Saihati, Yuma, AZ.

The applicant requests a permit to purchase in interstate commerce one male and two female captive-born Arabian Oryz (*Oryx leucoryx*) from Safari Enterprises, 334 North Poplar, Orange, California, for the purpose of captive breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281)

Dated: May 15, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–11812 Filed 5–19–92; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[ID–010–4410–08]

Land Use Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend.

SUMMARY: The Idaho State Director, Bureau of Land Management (BLM), will consider amending the Bruneau Management Framework Plan (MFP), the Owyhee MFP, and/or the Jarbidge Resource Management Plan (RMP) in consideration of a Notice of Intent by the Air Force to analyze the effect of a proposed land exchange by the State of Idaho to establish an additional air-to-ground military training range in southwestern Idaho. The land use plan amendment will be combined with development of the US Air Force Environmental Impact Statement (EIS) that will analyze implementation of the State range proposal and any reasonable alternatives. The United States Air Force will be the lead agency for the EIS; BLM and the State of Idaho will be cooperating agencies. The public is invited to provide scoping comments on the issues, impacts, and alternatives that should be addressed in the EIS and land use plan amendment process.

DATES: Public scoping comments for the land use plan amendment are requested prior to July 1, 1992. Public meetings will be held jointly with the Air Force, the State of Idaho, Federal Aviation Administration.

ADDRESSES: Written comments on the land use plan amendment should be sent to: Boise District Manager, Bureau of Land Management, 3948 Development Way, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Butch Peugh, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706. Telephone (208) 384–3076.

SUPPLEMENTARY INFORMATION: The two MFPs and the RMP identified above are BLM's official Land Use Plans for managing public lands that may be affected by the establishment of the State's proposed training range. Based on a previously completed EIS (Air Force in Idaho, January, 1992), the range proposal is expected to involve an exchange of approximately 20,000 acres of public land with the State of Idaho, plus changes in resource managment of surrounding public lands.

The preliminary issues identified to date for analyses in the Land Use Plan amendment and EIS process are potential impacts on, and changes in management of, vegetation and wildlife, recreation, cultural, and wilderness values; socioeconomics and public safety, special land use designations and increased wildfire potential. Planning criteria will be used to streamline and focus the amendment process and to establish standards and factors to guide decision making. The proposed planning criteria for the amendment will be existing laws, regulations, and BLM policies; plans, programs, and policies of other federal agencies, State and local government, and Indian tribes; public input; quantity and quality of noncommodity resource values; future needs and demands for existing or potential resource commodities and values; past and present use of public and adjacent lands; public benefits of providing goods and services relative to costs; environmental impacts; social and economic values; and public welfare and safety. These planning criteria may be revised during the public scoping process. Four public meetings are tentatively scheduled during June, 1992, in Boise, Mountain Home, Twin Falls, and Grandview. Detailed information on the time and place of each of these meetings will be announced in the near future by mailings and local newspaper articles.

Richard Bastin,

Deputy State Director Resources.

[FR Doc 92–11767 Filed 5–19–92; 8:45 am]

BILLING CODE 4310–GG–M

[OR–110–6310–11–257A; G2–238]

Medford District Advisory Council; Meetings

May 11, 1992.

AGENCY: Bureau of Land Management, Medford District Office, Interior.

ACTION: Notice.

SUMMARY: This notice announces the meeting date of the Medford District Advisory Council on June 25, 1992 at 8:30 a.m. at the Medford District Office, 3040 Biddle Road, Medford, Oregon. This notice is given in accordance with Public Law 99–463.

FOR FURTHER INFORMATION CONTACT: Kurt Austermann, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504; Telephone 503–770–2424.

SUPPLEMENTARY INFORMATION: The meeting will begin at 8:30 a.m. in the Oregon room of the Bureau of Land Management office at 3040 Biddle Road, Medford, Oregon. The agenda for the Advisory Council includes a status report on the District's Resource Management Plan and efforts to revise the Management Plan for the Wild and Scenic Rogue River.

Persons interested in making oral statements during the Council meeting may do so following conclusion of the Council's other agenda items, or written statements may be submitted for the Council's consideration. Anyone wishing to make an oral statement at the Council meeting must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by close of business June 24, 1992. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Wayne M. Kuhn,

Acting District Manager.

[FR Doc. 92-11741 Filed 5-19-92; 8:45 am]

BILLING CODE 4310-33-M

Supplementary Rules for Certain Public Lands Managed by the Bureau of Land Management, Las Vegas District

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Final Rules for Certain Public Lands Managed by the Bureau of Land Management within the Las Vegas District, Las Vegas, Nevada.

SUMMARY: These rules are necessary for the management of actions, activities, and public use on certain public lands which may have or are having adverse impacts on persons using public lands, on property, and on resources located on public lands located in, or acquired for inclusion within, the Red Rock Canyon National Conservation Area (NCA), Las Vegas District, in the State of Nevada. The rules consists of rules and legal definitions which support the rules.

The affected lands are located in the following areas:

Mount Diablo Meridian

T. 20 S., R. 57 E., Sec. 24, 25, and 36.

T. 20 S., R. 58 E., Sec. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17; Lots 1–4 and E½, E½, W½ of Sec. 18; Lots 1–4 and E½, E½ W½ of Sec. 19; Sec. 20, 21, 22, 23, 24, 25, 26, 27, 28, 29; Lots 1–4, E½, E½ W½ if Sec. 30; Lots 1–4, E½, E½, E½ W½ of Sec. 31; Sec. 32, 33, 34, 35, 36.

T. 20 S., R. 59 E., Lots 1–4 and E½, E½ W½, of Sec. 7; Sec. 8, 9; N½ of Sec. 16; Lots 1–12 of Sec. 17; Lots 1–4 and E½, E½ W½, of Sec. 18; Lots 3–12 and E½ SW¼, SE¼ of Sec. 19; Lots 1–4 of Sec. 20; Lots 1–4 and E½, E½ W½ of Sec. 30; Lots 1–4 and E½ E½ W½, of Sec. 31; S½ (within) of Sec. 32.

T. 21 S., R. 57E., Lots 1–4 and S½ N½, S½, of Sec. 1; Sec. 12, 13, 24, 25, 36.

T. 21 S., R. 58 E., Lots 2, 3, 4, and SW¼ NE¼, W½ SE¼ NE¼, S½ NW¼, SW¼, W½ NE¼ SE¼, SE¼ NE¼ SE¼, W½ SE¼, SE¼ SE¼, of Sec. 1; Lots 1–4, S½ N½, S½ of Sec. 2; Lots 1–4, S½ N½, S½ of Sec. 3; Lots 1–4, S½ N½, S½ of Sec. 4; Lots 1–4, S½ N½, S½ of Sec. 5; Lots 1–7, S½ NE¼, SE¼ NW¼, E½ SW¼, SE¼ of Sec. 6; Lots 1–4, E½, E½ W½ of Sec. 7; Sec. 8, 9, 10, 11, 12, 13, 14, 15; N½ N½, SE¼ NE¼, SW¼ NW¼, S½ of Sec. 16; Sec. 17; Lots 1–4, E½, E½ W½ of Sec. 18; Lots 1–4, E½, E½ W½ of Sec. 19; Sec. 20, 21, 22, 23; E½ NE¼, E½ W½ NE¼, NW¼ NW¼ NE¼, N½ NW¼, SW¼ NW¼, N½ SE¼ NW¼, SW¼ SE¼ NW¼, N½ SE¼ NW¼, SW¼ SE½ NW¼, W½ SW¼, W½ SE¼ SW¼, E½ NE¼ SE¼, NE¼ SW¼ SE¼; SE¼ SE¼ of Sec. 24; W½, NW¼ NE¼ SE¼ NW¼ NE¼, SW¼ NE¼, W½, W½ E½ SE¼, W½ SE¼ of Sec. 25; Sec. 26, 27, 28, 29; Lots 1–4, E½, E½ W½ of Sec. 30; Lots 1–4, E½, E½ W½ of Sec. 31; Sec. 32, 33, N½, SW¼, N½ SE¼, SW¼ SE¼ of Sec. 34; E½, NW¼ of Sec. 35; W½ E½ NE¼, W½ NE¼, W½, N½ SE¼, SW¼ SE¼, W½ SE¼ SE¼ of Sec. 36.

T. 21 S., R. 59 E., S½ NW¼ of Sec. 3; Lots 3, 4 (within), Lots 5–8 and S½ NW¼, SW¼, of Sec. 4; Lots 1–4 and S½ N½, S½ of Sec. 5; Lots 1, 2, 7 and S½ NE¼, S½ SE¼ SE¼ NW¼, N½ NW¼ NE¼ SW¼, S½ S½ NE¼ SW¼, SE¼ SW¼, E½ SE¼, S½ NE½ SW¼, SE¼, N½ NW¼ SW¼ SE¼ of Sec 6; Lots 1–4; E½, E½ W½ of Sec. 7; Sec. 8, 9; Lots 15–18 of Sec. 10; Lots 3, 4 and N½ NW¼, of Sec. 16; Lots 1–7 and N½ N½ of Sec. 17; Lots 5–17 and N½ NE¼, NE¼ NW¼, of Sec. 18; Lots 1–4 and E½, E½ W½ of Sec. 19.

T. 22 S., R. 58 E., Lots 1–4 and S½ N½, N½ SE¼, SE¼ SE¼ of Sec. 1; Lots 1–3 and S½ N½, N½ SW¼, NW¼ SE¼ of Sec. 2; Lots 3, 4 and SW¼ NW¼, S½ SW¼, SE¼ of Sec. 3; Lots 1–4 and S½ N½, S½ of Sec. 4; Lots 1–4 and S½ N½, S½ of Sec. 5; Lots 1, 2, 7–13, E½ NE¼, SE¼ SW¼, SE¼ of Sec. 6; Lots 1–4, E½, and E½ W½ of Sec. 7; Sec. 8, 9, 10; Lots 1–4 and N½, SW¼ of Sec. 11; Lots 1–6 and E½, SE¼ SW¼ of Sec. 12; Lots 1, 2 and E½, E½ W½, W½ SW¼ of Sec. 13; Lots 1–10 and W½ NW¼, SW¼ of Sec. 14; Sec 15, 16, 17; Lots 1–4 and E½, E½ W½ of Sec. 18; NE¼ of Sec. 20; Sec. 21, 22; Lots 1–8 and S½ of Sec. 23; Lots 1–4 and N½, SW¼ of Sec. 24; Lots 1–5 and SW¼ NE¼, W½ W½, SE¼ NW¼, E½ SW¼, W½ SE¼, SE¼ SE¼, of Sec. 25; lots 1, 2, and N½, SW¼, E½ SE¼ of Sec. 26; Sec. 27, 28; Lots 1–6 and N½ NE¼, W½ of Sec. 33; Lots 1–13 and W½ NE¼, NE¼ NW¼ of Sec., 34; Lots 1–11, and E½ E½, NW¼ SE¼ of Sec. 35; Sec. 36.

T. 22 S., R. 59 E., Lot 4 (within), Lots 5, 6, 7 and SE¼ NW¼ (within), E½ SW¼, NW¼ SE¼ (within), SW¼ SE¼, SE¼ SE¼ (within) of Sec. 6; Lots 1–4 and N½ NE¼, N½ SW¼ NE¼, E½ NW¼, E½ SW¼, S½ NE¼ SW¼ SE¼, W½ SW¼ SE¼, SE¼ SW¼ SE¼, SE¼ SE¼ of Sec. 7; W½ NW¼, SW¼, SW¼ SE¼ of Sec. 8; W½ NE¼, NW¼ of Sec. 17; Lots 1, 2, and N¼ E½ NW¼ of Sec. 18.

T. 23 S., R. 58 E., Lots 1–4 and S½ N½, S½ of Sec. 1; Lots 1–4 and S½ N½, S½ of Sec. 2; Lots 1–4 and S½ N½, S½ of Sec. 3; Lots 1–4 and S½ N½, S½ of Sec. 4; Sec. 9, 10, 11, 12.

EFFECTIVE DATE: May 20, 1992.

FOR FURTHER INFORMATION CONTACT: Randy August, Bureau of Land Management, Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126, Telephone: 702–647–5000.

SUPPLEMENTARY INFORMATION: The Nevada State Director of the Bureau of Land Management is establishing these supplementary rules which are necessary for the protection of persons, property and public lands and resources within the Red Rock Canyon National Conservation Area (NCA), lands acquired for inclusion in the Red Rock Canyon NCA, and all lands that may be incorporated into Red Rock Canyon NCA, in the Las Vegas District, as provided for in 43 CFR 8365.1–6. Violations of these rules are punishable by a fine not to exceed $100,000.00 ($200,000 if the violator is an organization), imprisonment not to exceed 12 months, or both, as provided for under the Federal Land Policy Management Act (Pub. L. 94–579) as amended by 18 U.S.C. 3571(b)(5).

Some of the supplementary rules make reference to "designated" roads, "designated" fruits, nuts, plants, or berries, "designated" trails, and so on. These designations are currently being

developed as part of the resource management planning process for the Red Rock Canyon National Conservation Area. Those designations may not become final until after these supplementary rules take effect.

These rules were published in the Federal Register as proposed rules on December 13, 1991 [56 FR 65095]. Nine comments were received. Three of the comments were general in nature either in favor of or opposed to the rules, without specifically addressing them. The remaining six comments were specifically focused on individual rules.

Several commenters made proposals that were either byond the scope of the proposed rules, or exceeded the Bureau's statutory authority. Examples are proposals to ban possession of spray paint within the National Conservation Area, which is beyond the scope of the original proposed rulemaking; and a proposal to ban trapping within the National Conservation Area, which exceeds the Bureau's statutory authority. Two commenters opposed the proposed rule allowing designation of a target shooting area, and that proposal was dropped; several commenters opposed the proposed rule on disposal of human waste, which was modified to allow burial of waste instead of requiring that it be removed; lengthy comments on protection of rock art, which resulted in modification of the proposed rules to close all areas within fifty feet of any rock art to climbing; and minor drafting, spelling, and organizational changes to make the rules clearer. The proposed rule requiring registration for overnight climbs is deleted, as is the proposed rule that all pets must be on a leash or under physical control at times.

Supplementary Rules, Red Rock Canyon National Conservation Area

Section 1.0 Definitions and Administrative Provisions

1.1 Definitions

The following definitions shall apply to all regulations in 43 CFR part 8360, unless modified within a specific part or regulation:

"Abandonment" means the voluntary relinquishment of control of property for longer than a period specified with no intent to retain possession.

"Accident" means the collision, intentional or unintentional, of a vehicle with another vehicle bicycle, pedestrian, structure, sign, or fixed object.

"Administrative activities" means those activities conducted under the authority of the Bureau of Land Management for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with the results in this chapter, or repairing or maintaining government facilities.

"Bicycle" means every device, other than wheelchairs, propelled solely by human power upon which a person or persons may ride on land, having one, two or more wheels.

"Camping" means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy.

"Cultural resource" means material remains of past human life or activities that are of significant cultural interest and are at least 50 years of age. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, basketry, rock art, bottles, weapons, weapon projectiles, tools, structures or portions of structures, or any portion or piece of the foregoing items, and the physical site, location, or context in which they are found, or human skeletal materials or graves.

"Designated road" means a road or roads identified on a map of designated roads which will be maintained and available for public inspection at the Las Vegas District Office, Bureau of Land Management, and at the Red Rock Canyon National Conservation Area Visitor Center, and which are also posted as designated roads through the posting of appropriate signs or markers. Any road with any signed or physical barrier, including posts, branches, or rocks, is not a designated road.

"Designated trails" means a trail or trails identified on a map of designated trails which will be maintained and available for public inspection at the Las Vegas District Office, Bureau of Land Management, and at the Red Rock Canyon National Conservation Area Visitor Center, as well as any trail or route designated for a specific use by the posting of appropriate signs.

"Firearm" means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to, expel a projectile by the ignitiion of a propellant.

"Handling", as applied to wild horses and burros, means the intentional touching, feeling, or moving of a wild horse or burro.

"Hunting" means taking or attempting to take wildlife, except trapping.

"Motor vehicle" means every vehicle that is self-propelled by a non-living power source, including any vehicle that is propelled by electric power, but not operated upon rails or upon water.

"Operator" means a person who operates, drives, controls, or otherwise hs charge of a mechanical mode of transportation or any other mechanical equipment.

"Paleontological" means pertaining to ancient life forms, and includes but is not limited to fossilized remains of plant and animal life.

"Permit" means a written authorization, from an authorized officer of the Bureau of Land Management, to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

"Person" means an individual, firm, corporation, society, association, partnership, or private or public body.

"Pet" means a dog, cat or any animal that has been domesticated.

"Picnic area" means any area set aside or designated for picnic use by either the posting of appropriate signs, or by the provision of picnic tables.

"Possession" means exercising direct physical control or dominion, with or without ownership, over property, or archaeological, cultural or natural resources.

"Property" means both real and personal property.

"Red Rock Canyon National Conservation Area" means all lands owned by the United States and included within, acquired for inclusion within, or which are later incorporated within, the Red Rock Canyon National Conservation Area. This includes lands owned by the United States, but managed by the Nevada Division of State Parks or another organization or agency, pursuant to a cooperative management agreement. See Public Law 101–621, entitled "Red Rock Canyon National Conservation Area Establishment Act of 1990."

"Rock art" means images and symbols engraved into, pecked into, scratched upon, painted upon, or otherwise marked into or on geological features by past residents of or visitors to Red Rock Canyon National Conservation Area, and which are at least one hundred years old, including but not limited to petroglyphs, pictographs, and inscriptions.

"Smoking" means the carrying or possession of lighted cigarettes, cigars or pipes, or the intentional and direct inhalation of smoke from these objects.

"Take" or "taking" means to pursue, hunt, harass, harm, shoot, trap, net, capture, collect, kill, wound, or attempt to do any of the above.

"Traffic" means pedestrians, ridden or herded animals, vehicles, and other

conveyances, either singly or together while using any road, trail, street or other thoroughfare for purpose of travel.

"Traffic control device" means any sign, painted roadway marking, or other device or means for controlling or directing vehicle traffic.

"Trap" means a snare, trap, mesh, wire or other implement, object or mechanical device designed to entrap or kill animals other than fish.

"Trapping" means taking or attempting to take wildlife with a trap.

"Unattended" means failure to exercise direct control over property.

"Unloaded," as applied to weapons and firearms, means that:

(1) There is no unexpended shell, cartridge, or projectile in any chamber or cylinder of a firearm or in a clip or magazine inserted in or attached to a firearm;

(2) A muzzle-loading weapon does not contain gun powder in the pan, or the percussion cap is not in place; and

(3) Bows, crossbows, spear guns or any implement capable of discharging a missile or similar device by means of a loading or discharging mechanism, when that loading or discharging mechanism is not charged or drawn.

"Vehicle" means every device in, upon, or by which a person or property is or may be transported or drawn on land, except devices used exclusively upon stationary rails or track.

"Weapon" means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, spearguns, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapons, nun-chucks, clubs, billy-clubs, and any device modified for use or designed for use as a striking instrument; and includes any weapon the possession of which is prohibited under Nevada law.

"Wildlife" means any member of the animal kingdom and includes a part, product, egg or offspring thereof, or the dead body or part thereof, except fish.

1.2 Permits

(a) An authorized officer may issue a permit to authorize an otherwise prohibited or restricted activity. Such permits may contain reasonable restricitons necessary to preserve and protect public lands and their resources, and to minimize interference with an inconvenience to other visitors to Red Rock Canyon National Conservation Area.

(b) Violation of the terms and conditions of a permit is prohibited.

Section 2.0 Vehicle Operations and Traffic Safety

2.1 Unsafe Operation

The following are prohibited:

(a) Failing to maintain that degree of control of a vehicle necessary to avoid danger to persons, property or wildlife.

(b) Operating a motor vehicle in a manner which unnecessarily caused its tires to squeal, skid, or break free of the road surface.

(c) Operating a vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, pedestrians, traffic, weather, road and light conditions and road character.

2.2 Towing or Moving Vehicles

(a) No person shall tow or move a vehicle that has been involved in an accident without first notifying an authorized officer, unless the position of the vehicle constitutes a hazard or prior notification is not practicable, in which case notification shall be made before the vehicle is removed from Red Rock Canyon National Conservation Area.

(b) Failure to notify an authorized officer as required in the preceding subsection is prohibited.

2.3 Weight, Width, and Length Limitations

(a) The following restrictions are hereby established for the Red Rock Canyon Scenic Loop Drive:

(i) No vehicle, or vehicle and trailer combination, may be operated which exceeds thirty-five thousand (35,000) pounds gross vehicle weight.

(ii) No vehicle may be operated which exceeds eight feet in width.

(iii) No vehicle, towing any trailer, may be operated when the length of the trailer exceeds 35 feet.

(b) Operating a vehicle on the Red Rock Canyon Scenic Loop Drive, when the vehicle exceeds any of the weight, width, or length restrictions listed above, is prohibited.

(c) Exemptions. The weight, width, and length restrictions listed in this section do not apply to vehicles used by any federal, state, county, or local government agency, or to privately owned vehicles performing work for any such agency.

2.5 Obstructing Traffic

The following are prohibited:

(a) Stopping, parking, or leaving any vehicle, whether attended or unattended, upon the paved, graded, or maintained surface of a road, so as to leave less than ten (10) feet of the width of the same traffic lane for the free or unobstructed movement of other vehicles is prohibited, except in the event of accident or other conditions beyond the immediate control of the operator, or as otherwise directed by an authorized person.

(b) Causing or permitting a vehicle under one's control to obstruct traffic by driving so slowly as to interfere with the normal flow of traffic, or in any other manner, is prohibited.

2.6 Bicycles

Except when specifically allowed by permit, the following are prohibited:

(a) The use of bicycles except on paved roads and parking areas, other roads or routes designated for motor vehicles, and on routes or trails designated for bicycle use. Such designations may be by the posting of signs or may be identified on a map which shall be available at the Las Vegas District Office and the Red Rock Canyon National Conservation Area Visitor Center.

(b) Possessing a bicycle in a wilderness area established by Federal statute.

(c) On roads, riding a bicycle other than on the right side of the roadway.

(d) On raods, riding a bicycle abreast of a bicycle being ridden on the right side of the roadway.

2.7 Travel and Parking Off Designated Roads

(a) Minor disturbance. Operating, or parking, a motor vehicle off of but less than 20 feet from a designated road or parking area is classified as a minor disturbance to natural features. Such disturbance of natural features is prohibited.

(b) Major disturbance. Operating, or parking, a motor vehicle 20 feet or further from a designated road or parking area is classified as a major disturbance to natural features. Such disturbance of natural features is prohibited.

2.8 Maintaining Vehicles

Lubricating or repairing any vehicle, except repairs necessitated by emergency, is prohibited.

Section 3.0 Public Use and Recreation

3.1 Fireworks and Explosives

(a) The possession or use of fireworks is prohibited, except pursuant to the terms and conditions of a permit.

(b) The possession or use of explosives and blasting agents is prohibited, except pursuant to the terms and conditions of a permit. This section shall not apply to explosives carried aboard vehicles being driven through Red Rock Canyon National

Conservation Area on State Highway 159 or State Highway 160, provided that the persons possessing or transporting such explosives are in compliance with all other applicable state and federal laws, rules, and regulations controlling the possession and transportation of explosives.

3.2 Weapons

(a) The following are prohibited within Red Rock Canyon National Conservation Area:

(1) Possession of a loaded weapon, except as authorized under subsection (b), following.

(2) Intentional discharge of any weapon, except as authorized under subsection (b), following.

(3) Possession of an unregistered firearm, when registration of the firearm is required by either the State of Nevada or Clark County.

(b) The possession of loaded weapons, and their use, is allowed when the possessor is at the time of possession involved in hunting within Red Rock Canyon National Conservation Area in accordance with state law, and in compliance with the restrictions contained in § 3.4(b) of these Supplementary Rules.

3.3 Trapping

(a) Trapping is allowed in accordance with state law, except within areas closed to trapping. Trapping in violation of state law is prohibited.

(b) The following areas are closed to trapping:

(1) those portions of Red Rock Canyon National Conservation Area north of State Highway 160, on the east side of the Spring Mountain range, and which are located below the elevation of 5,000 feet.

(2) all areas within one mile of any designated hiking trail, or of any trail designated for the use of horses and pack animals. Such designations will be identified on a map which will be made available for public inspection at the Red Rock Canyon National Conservation Area Visitor Center, and at the Las Vegas District Office of the Bureau of Land Management.

(c) Trapping, in an area designated as closed to trapping, is prohibited.

3.4 Hunting

(a) Hunting is allowed in accordance with state law, except within areas designated as closed to hunting. Hunting in violation of state law is prohibited.

(b) For purposes of public safety, the following area is designated as closed to hunting:

(1) Those areas of Red Rock Canyon National Conservation Area north of State Highway 160, on the east side of the Spring Mountain range, and which are located below the elevation of 5,000 feet; except that hunting for bighorn sheep, in accordance with state law, is allowed below the elevation of 5,000 feet in the following two areas:

Mountain Diablo Meridian

R. 58 E., T. 20 S. N½ of Section 36
R. 59 E., T. 20 S. N¼ of Section 31

3.5 Fires

The following are prohibited:

(a) Lighting, tending, or maintaining any fire, except in a stove or grill provided for such purpose; or within designated camping areas, in a fire ring provided for such purpose by the Bureau of Land Management. This prohibition does not apply to camp stoves, such as portable gasoline stoves or charcoal grills, brought by visitors for the purpose of cooking.

(b) Throwing or discarding lighted or smoldering material in a manner that threatens, causes damage to, or results in the burning of property or resources.

3.6 Glass Containers

The possession of glass containers, except within vehicles, designated camping areas, and designated picnic areas, is prohibited.

3.7 Human Waste

(a) Human fecal matter, including paper or other items contaminated with human fecal matter, may be deposited or disposed of only in restrooms, toilets, or other facilities designed or designated for the disposal of human fecal matter; or, where such facilities are not provided or available, shall either be removed from Red Rock Canyon National Conservation Area or be buried at least six inches below ground level. Human fecal matter may not be buried within 200 feet of any water source or supply.

(b) Depositing or disposing of human fecal matter within Red Rock Canyon National Conservation Area, except in accordance with subsection (a) above, is prohibited.

3.8 Preservation of Natural and Cultural Resources

(a)(1) An authorized person may designate fruits, nuts, seeds, plants, berries, and similar plant materials which may be collected for personal use within Red Rock Canyon National Conservation Area. Such designations may, if appropriate, specify a maximum amount that may be collected for personal use. Collection of plant materials in excess of the designated maximum is prohibited.

(2) Collection of plant materials, other than those designated under (a)(1) above, is prohibited; except that the District Manager may authorize collections other than those in (a)(1) above through the issuance of a permit; and except for removal, collection, and/or transplantation of plants and plant materials for official purposes such as landscaping and trail maintenance and construction.

(b) The following are prohibited:

(1) Possessing, destroying, taking, injuring, defacing, removing, harassing, or disturbing from its natural state living or dead wildlife, or the parts or products thereof, such as antlers or nests, except when incident to hunting conducted in accordance with state law.

(2) Introducing wildlife, fish, or plants, including their reproductive bodies, into Red Rock Canyon National Conservation Area, except when authorized by the District Manager for administrative activities, or pursuant to the terms and conditions of a permit.

(3) Digging for, removing, destroying, damaging, disturbing, or possessing artifacts, rock art, or other cultural resources, or using any device for detecting metal, except when allowed by permit.

(4) Feeding, attempting to feed, riding, attempting to ride, handling, or otherwise harassing or disturbing wild horses or burros, except pursuant to the terms and conditions of a permit.

(5) Collecting wood or other plant material for use in a campfire or for any other purpose, except pursuant to subsection (a)(1), above.

(6) Tossing, throwing, or rolling rocks or other items inside caves or caverns, into valleys or canyons, or down hillsides or mountainsides.

(7) Possessing, destroying, defacing, digging, or removing rocks, cave formations or parts thereof, or fossilized or nonfossilized paleontological specimens.

(8) Applying chalk to, making a rubbing of, making a casting of, painting upon, or making a latex or other mold of, any rock art.

3.9 Pets

(a) The following are prohibited:

(1) Allowing a pet to make noise that is unreasonable considering location, time of day or night, and impact on public land users.

(2) At developed sites including campgrounds, picnic areas, parking areas, and visitor centers, failing to remove waste deposited by a pet.

(3) Allowing a pet, other than a seeing-eye dog, hearing-ear dog, or other animal specifically trained to assist a

handicapped person, to enter buildings operated by the Bureau of Land Management.

(4) Leaving a pet unattended and tied to an object.

(b) Pets or feral animals that are running-at-large and observed in the act of killing, injuring, or molesting humans, livestock, or wildlife may be destroyed by an authorized person if necessary for public safety or the protection of livestock or wildlife.

(c) Pets running-at-large may be impounded, and may be turned over to Clark County Animal Control or to another appropriate organization which will accept, care for, and dispose of such pets. The owner of such pets may be charged reasonable fees for kennel or boarding costs, feed, veterinary care, and transportation.

(d) This section does not apply to dogs used by authorized Federal, State, and local law enforcement officers in the performance of their official duties.

3.10 Horses and Pack Animals

Except when authorized by permit, and except for horses and pack animals used for administrative activities or for the official business of any governmental entity or agency, the following are prohibited:

(a) The use of horses or pack animals in picnic areas, or on trails other than those designated as open to horses and pack animals. Such designations will be identified on a map which will be available for public inspection at the Red Rock Canyon National Conservation Area Visitor Center and at the Las Vegas District Office.

(b) The use of horses or pack animals on a paved road, except:

(1) Where such travel is necessary to cross the road.

(2) When the road has been closed to motor vehicles.

(c) Free-trailing or loose-herding of horses or pack animals on trails or cross-country.

(d) Allowing horses or pack animals to proceed in excess of a slow walk when passing in the immediate vicinity of persons on foot or bicycle.

(e) Obstructing a trail while horses or pack animals are passing; or making any unreasonable noise or gesture with the intent of, or recklessly creating a risk thereof, frightening, stampeding, spooking, or otherwise interferng with a user's control over his horses or pack animals.

(f) At developed sites including campgrounds, picnic areas, paved parking areas, and visitor centers, failing to remove waste deposited by horses and pack animals.

3.11 Alcoholic Beverages

(a)(1) The use and possession of alcoholic beverages within Red Rock Canyon National Conservation Area is allowed in accordance with the provisions of this section.

(2) The following are prohibited:

(i) The sale or gift of an alcoholic beverage to a person under 21 years of age.

(ii) The possession of an alcoholic beverage by a person under 21 years of age.

(b)(1) The District Manager may close all or a portion of public buildings, or structures, parking lots, picnic areas, overlooks, walkways, commemorative areas, historic areas, or archaeological sites within Red Rock Canyon National Conservation Area to the consumption of alcoholic beverages when it is determined that:

(1) The consumption of alcohol would be inappropriate considering other uses of the location and the purpose for which it is maintained or established; or

(ii) Incidents of aberrant behavior related to the consumption of alcohol are of such magnitude that diligent attempts to enforce applicable regulations do not alleviate the problem.

(2) Such closures may be either by publication of the closure in the **Federal Register** by the posting of appropriate signs, or both.

(3) Failure to abide by such a closure is prohibited.

(c) Presence in Red Rock Canyon National Conservation Area when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person, or damage property or public land resources, is prohibited.

3.12 Disorderly Conduct

A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(a) Engages in fighting or threatening, or in violent behavior.

(b) Uses language, an utterance or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

3.13 Smoking

(a)(1) The District Manager may designate areas of Red Rock Canyon National Conservation Area, or all or a portion of a building, structure or facility as closed to smoking when necessary to protect public land resources, reduce the risk of fire, or prevent conflicts among visitor use activities. Such closures may be either by publication of the closure in the **Federal Register**, by the posting of appropriate signs, or both.

(2) Smoking in an area or location so designated is prohibited.

(b) Smoking is prohibited within all caves and caverns.

3.14 Property

(a) The following are prohibited:

(1) Abandoning property.

(2) Leaving property unattended for more than 24 hours in a day use area, or 72 hours in other areas, unless the owner of the property by permit or registration is specifically authorized a longer period of time.

(3) Failing to turn in found property to an authorized person as soon as practicable.

(b) Impoundment of property. (1) Property left unattended in excess of the time limits in subsection (a)(2), above, may be impounded by an authorized person.

(2) Unattended property that interferes with visitor safety, orderly management of Red Rock Canyon National Conservation Area, or presents a threat to public land resources may be impounded by an authorized person at any time.

(3) The owner of record is responsible and liable for charges to the person who has removed, stored, or otherwise disposed of property impounded pursuant to this section.

(c) Disposition of property. Unattended property impounded pursuant to this section shall be deemed to be abandoned unless claimed by the owner or an authorized representative thereof within 60 days, and shall be disposed of in accordance with applicable regulations.

3.15 Aircraft and Air Delivery

Delivering or retrieving a person or object by parachute, helicopter, ultralight aircraft, hang glider, balloon, or other airborne means, except in emergencies involving public safety or serious property loss, or pursuant to the terms and conditions of a permit, is prohibited. The provisions of this section shall not be applicable to official business of the Federal government, or emergency rescues or rescue training in accordance with the direction of the District Manager, or to landings due to circumstances beyond the control of the operator.

3.16 Camping

(a) Camping is prohibited within Red Rock Canyon National Conservation

Area, except: at elevations 5,000 feet above sea level and higher; within the designated camping areas at Oak Creek and Black Velvet Canyon; or within such additional or substitute areas as may be designated in a General Management Plan or Resource Management Plan for the National Conservation Area and posted by appropriate signs.

(b) By the posting of appropriate signs at the entrance to any campground, the District Manager may establish special conditions or rules for camping within any campground. Violation of such conditions or rules is prohibited.

(c) The following are prohibited:

(1) Digging or leveling the ground at a campsite.

(2) The installation of permanent camping facilities.

(3) Failing to obtain a permit, when required.

(4) Violation of the terms and conditions of any camping permit.

(5) In designated campgrounds, creating or sustaining unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m.

(6) Except within designated campgrounds, camping within 200 feet of any natural or man-made water source.

3.17 Misappropriation of Property

The following are prohibited:

(a) Obtaining or exercising unlawful possession over the property of another with the purpose to deprive the owner of the property.

(b) Acquiring or possessing the property of another, with knowledge or reason to believe that the property is stolen.

3.18 Tampering and Vandalism

The following are prohibited:

(a) Tampering or attempting to tamper with property or real property, or moving, manipulating, or setting in motion any of the parts thereof, except when such property is under one's lawful control or possession.

(b) Destroying, injuring, defacing, or damaging property or real property.

3.19 Climbing

The following are prohibited:

(a) Climbing on, or within fifty feet of, any rock art.

(b) Touching or contacting any rock art, or allowing climbing equipment, including but not limited to ropes, slings, or packs, to fall upon, rest against, or otherwise come in contact with any rock art.

(c) Using climber's chalk, drilling bolts, or inserting or applying pitons, chocks, or any other anchoring device, within fifty feet of any rock art.

3.20 Closures

(a)(1) The existing limited closures of the Red Rock Canyon Scenic Loop Drive and the use areas associated with it, of the La Madre Spring area, and of the Red Spring Picnic Area, remain in effect. These areas will continue to be limited to daytime use only, with the exact hours of closure posted at the entrance to these areas.

(2) The existing limited closure of the Red Rock Canyon Scenic Loop Drive is modified as follows: From one-half-hour before sunrise until the posted opening hour, pedestrians and bicyclists may enter and use the Scenic Loop Drive and the use areas associated with it. Motor vehicles will remain prohibited, except for administrative purposes or by permit or registration.

(b) The area known as the Cave, located at T. 21S, R. 58E, section 13, and accessible by trail from State Highway 159, is limited to daytime use only. The exact hours of closure will be posted at the entrance to the area.

(c) The area known as Brownstone Canyon, located at T. 20S, R. 58E. sections 23, 24, 25, and 26, is limited to public use as follows:

(1) Daytime use only is permitted, with the exact hours of closure posted at the entrance to Brownstone Canyon.

(2) Vehicles, other than authorized vehicles, are prohibited from travelling into Brownstone Canyon beyond the fenced and/or signed barrier. For a vehicle to be authorized, it must be entering Brownstone Canyon in the performance of the official business of a federal, state, county, or local government agency or organization; or it must have registered and/or been issued a permit by the Bureau of Land Management. Such permits or registration can be obtained at the Red Rock Canyon National Conservation Area Visitor Center, or at the Las Vegas District Office of the Bureau of Land Management.

Billy Templeton,

State Director, Nevada.

[FR Doc. 92-11673 Filed 5-19-92; 8:45 am]

BILLING CODE 4310-84-M

[Co-942-92-4730-12]

Colorado: Filing of Plats of Survey

May 8, 1992.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., May 8, 1992.

The plats representing the dependent resurvey of portions of the Sectional Guide Meridian and subdivisional lines, and the subdivision of certain sections, T. 34 N., R. 3 W. (South of the Ute Line), New Mexico Principal Meridian, Colorado, Group No. 764, was accepted April 17, 1992.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of portions of the east boundary, the subdivisional lines, and certain claim lines, Fractional T. 11 N., R. 104 W., Sixth Principal Meridian, Colorado, Group No. 876, was accepted April 23, 1992.

The plat (in 2 sheets) representing the dependent resurvey of a portion of the south boundary of T.16 S., R. 71 W. through T. 17 S., Rs. 70 and 71 W., the corrective dependent resurvey of portions of the east and west boundaries, the dependent resurvey of portions of the east, west, and north boundaries and the subdivisional lines, and the subdivision of certain sections, T. 17S., R. 71 W., Sixth Principal Meridian, Colorado, Group No. 798, was accepted April 13, 1992.

These surveys were executed to meet certain administrative needs of this Bureau.

The plats (in 2 sheets) representing the dependent resurvey of portions of the west boundary and subdivisional lines, the subdivision of certain sections, and a metes-and-bounds survey of a portion of the Fruitgrowers Reservoir boundary, T. 14 S., R. 94 W., Sixth Principal Meridian, Colorado, Group No. 990, was accepted April 7, 1992.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a metes-and-bounds survey of the Fruitgrowers reservior boundary in sections 13 and 14, T. 14 S., R. 95 W., Sixth Principal Meridian, Colorado, Group No. 990, was accepted April 7, 1992.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

The plat representing the dependent resurvey of a portion of the subdivisional lines and subdivision of section 21, T. 9N., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 816, was accepted September 14, 1987.

The plat (in 2 sheets) representing the dependent resurvey of certain mineral claims in section 10, T.3 S., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 918 was accepted April 7, 1992.

The plat representing the dependent resurvey of portions of the east and north boundaries and subdivisional lines, and the subdivision of sections 1 and 2, T. 34 N., R. 1 E., New Mexico

Principal Meridian, Colorado, Group No. 934, was accepted April 7, 1992.

The plat (in 2 sheets) representing the dependent resurvey of portions of the Sectional Guide Meridian, the subdivisional lines, and Tract Nos. 37, 38, and 41, T. 1N., R. 86W., Sixth Principal Meridian, Colorado, Group No. 947, was accepted April 28, 1992.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The supplemental plat showing the corrected bearing and distance between the west 1/16 section corner of sections 6 and 7 and the corner of sections 1, 6, 7, and 12, on the west boundary of the township, T. 27 S., R. 70 W., Sixth Prinicpal Meridian, Colorado, was accepted April 14, 1992.

The supplemental plat showing the corrected bearing and distance on the east half mile between sections 24 and 25, T. 17 S., R. 72 W., Sixth Principal Meridian, Colorado, was accepted April 14, 1992.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 92-11742 Filed 5-19-92; 8:45 am]

BILLING CODE 4310-JB-M

National Park Service

Big Thicket National Preserve; Revision of Preserve Boundary at Administration/Visitor Contact Unit

Section 1 of the Act of October 11, 1974 (88 Stat. 1254) provides for the establishment of Big Thicket National Preserve and authorizes the United States to accept title to any lands, or interests in lands, located outside the boundaries of the preserve which may be offered to the United States, if the Secretary finds that such lands would make a significant contribution to the purposes for which the preserve was created.

Pursuant to that authority the following described lands are added:

All that certain tract or parcel of land situated in the J. Castillo Survey, Abstract 165, Hardin County, Texas, said tract or parcel being more particularly described as follows, to wit:

Beginning at a Boat Spike at the intersection of the East right-of-way line of U. S. Highway Nos. 69 and 287 with the North right-of-way line of FM Highway No. 420, the said Boat Spike is sixty (60) feet perpendicular distance easterly from the centerline of the said U. S. Highway Nos. 69 and 287 and is forty (40) feet perpendicular distance northerly from the centerline of the said FM Highway No. 420, and by further description is N 24° 47' 47" W. 5361.64 feet from a concrete monument at the southeast corner of said Castillo Survey. From the said Boat Spike, a Southwestern Bell Telephone Company cable box bears N. 55° 00' E. 1.30 feet and a fence corner post bears N. 05° 00' E. 2.50 feet; run thence N. 16° 27' 05" W. along and with the East right-of-way line of the said U. S. Highway Nos. 69 and 287, sixty (60) feet perpendicular distance easterly from the centerline of the same 850.00 feet to a concrete mounument with a metal disc in top stamped "S. CASTILLO—KIRBY—1-1610—N. W. COR. 15 AC. TR", said monument being THE POINT OF BEGINNING;

Thence N. 16° 27' 05" W. along with the East right-of-way line of the said U. S. Highway Nos. 69 and 287, sixty (60) feet perpendicular distance easterly from the centerline of the same 300.00 feet to a point;

Thence N. 83° 22' 10" E. 1080.14 feet to a point;

Thence S. 16° 27' 05" E. 1150.00 feet to a point in the North right-of-way of said FM Highway No. 420, a distance of forty (40) feet perpendicular distance from the centerline of the same;

Thence S. 83° 22' 10" W. 300.00 feet along and with the North right-of-way of said FM Highway No. 420, being forty (40) feet perpendicular distance from the centerline of same to a concrete monument with a metal disc in top stamped "J. CASTILLO—KIRBY—1-1608—S. E. COR. 15 AC. TR"from which said concrete monument 10" Sweet Gum bears N. 50° 00' W. 24.90 feet, a 7" Pine bears N. 08° 00' E. 19.40 feet and a 10" Sweet Gum bears N.20° 00' E. 31.20 feet;

Thence N. 16° 27' 05" W. 850.00 feet to a concrete monument with a metal disc in top stamped "S. CASTILLO—KIRBY—1-1609—N. E. COR. 15 AC. TR";

Thence S. 83° 22' 10" W. 780.14 feet to a concrete monument with a metal disc in top stamped "S. CASTILLO—KIRBY—1-1610—N. W. COR. 15 AC. TR", to THE POINT OF BEGINNING.

Containing 13.10 acres of land, more or less.

Notice is hereby given that in accordance with the Act of October 11, 1974, as amended by the Act of October 17, 1984, the boundary of the Administration/Visitor Contact Unit of Big Thicket National Preserve is revised as described above, and as shown on map entitled "Boundary Map, Proposed Boundary Revision, Administration/Visitor Contact Unit, Big Thicket National Preserve," Drawing No. 175/80,007, dated August 1991. This map is on file and available for inspection in the Office of the National Park Service, Department of the Interior; the Office of the Southwest Region, National Park Service; and the Office of the Superintendent, Big Thicket National Preserve.

Dated: April 13, 1992.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 92-11771 Filed 5-19-92; 8:45 am]

BILLING CODE 4310-70-M

Civil War Sites Advisory Commission; Meetings

AGENCY: National Park Service. Department of the Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on June 5, 1992, at the Radisson Plaza Hotel, 369 West Vine, Lexington, Kentucky, 40507 (606/231-9000).

The meeting will begin at 7 p.m. and conclude not later than 9:30 p.m.

This meeting constitutes the seventh meeting of the Commission. The primary focus of the meeting will be on the subject of preserving and protecting Civil War sites. The Commission will welcome input from the public on the subject, especially as it relates to Civil War sites in Kentucky and surrounding states.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis. Anyone may file a written statement with the Commission concerning matters to be discussed.

Persons wishing further information concerning the meeting, such as the specific location of the meeting, or who wish to submit written statements, may contact Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-3936). Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in Room 6111, 1100 L Street, NW., Washington, DC.

Dated: May 5, 1992.

Lawrence E. Aten,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 92-11770 Filed 5-19-92; 8:45 am]

BILLING CODE 4310-70-M

Statue of Liberty National Monument

SUMMARY: The Department of the Interior, National Park Service is giving

notice to advise the public that it will close Liberty and Ellis Islands, Saturday, July 4, 1992.

SUPPLEMENTARY INFORMATION: The Commander, United States Coast Guard (USCG) Forces, New York, has developed comprehensive regulations for the OPSAIL '92 Tall Ships Parade which will include closure of the New York Harbor on the Fourth of July, 1992. In addition, use of neighboring Liberty State Park in Jersey City (New Jersey) roads as a spectator area and for a July 4 celebration will result in closure of their (New Jersey) as a spectator area and for a July 4 celebration will result in closure of their (New Jersey) roads to general traffic. Due to the channel being closed (boats being allowed to drop anchor beginning July 4 at 3 a.m.) and the Liberty State Park activities, Circle Line Statue of Liberty Ferries will not have passage to Liberty and Ellis Islands. Therefore, The Statue of Liberty National Monument and Ellis Island will be closed to the public July 4, 1992. Liberty and Ellis Islands will reopen to the general public at 9:30 a.m. Sunday, July 5, 1992. For further information contact Superintendent, Statue of Liberty National Monument, Ellis Island New York, 10004.

Dated: May 4, 1992.

John J. Burchill,

Acting Regional Director

[FR Doc. 92-11773 Filed 5-19-92; 8:45 am]

BILLING CODE 4310-70-M

Draft Environmental Impact Statement/Trail Protection Study, Pico/Killington Section, Appalachian National Scenic Trail, Rutland County, VT

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91-190 as amended), the National Park Service has prepared an environmental impact statement (DEIS assessing eight alternatives for location of the Pico/Killington Section of the Appalachian National Scenic Trail and acquisition of property rights from property owners. This Notice announces the availability of the DEIS. This Notice also announces public open house meeting for the purpose of receiving public comment on the DEIS.

DATES: Written comments on the DEIS will be accepted until July 1, 1992.

ADDRESSES: Inquiries about and comments on the DEIS should be directed to Project Manager, Appalachian National Scenic Trail, Harpers Ferry Center, Harpers Ferry, West Virginia 25425. Open house public meeting will be held at the Holiday Inn in Rutland, Vermont on June 10 from 7-10 pm, and at the Bennington Free Library in Bennington, Vermont on June 11 from 7-10 pm. National Park Service staff will be available to answer questions and receive comments on the DEIS at these open house meetings. Copies of the DEIS are available at the Appalachian Trail Project Office, Washington Street, Harpers Ferry, West Virginia. Copies are also available for inspection at Aldridge Public Library, Barre, Vermont, Bennington Free Library, Bennington, Vermont, Fletcher Free Library, Burlington, Vermont, Kellogg-Hubbard Library and Midstate Regional Library, Montpelier, Vermont, Rutland Free Library and Southwest Regional Library, Rutland, Vermont, Norman Williams Public Library, Woodstock, Vermont, Sherburne Memorial Library, Killington, Vermont, Northeast Regional Library, St. Johnsbury, Vermont, Northwest Regional Library, Fairfax, Vermont, Southeast Regional Library, Brattleboro, Vermont, and in room 1210, Interior Building, 18th & C Streets, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: Included among the alternatives are the No Action and Preferred Alternative. Also included in the DEIS is an analysis of two ski development scenarios for land area in the vicinity of the Pico/Killington Section of the Appalachian Trail. One is based on the proposals of Pico and Killington ski areas that were recently approved by the Vermont District Environmental Commission #1. The other is based on a full-buildout scale of development described in previously disclosed master plans of the two ski areas. The DEIS contains discussion of potential environmental impacts that would result from the various alternative trail decisions before the National Park Service as well as a discussion of possible impacts from the two ski development scenarios.

Dated: May 7, 1992.

John H. Davis,

Associate Director, Operations, National Park Service.

[FR Doc. 92-11769 Filed 5-19-92; 8:45 am]

BILLING CODE 4310-70-M

Mississippi River Corridor Study Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE & TIME: June 3, 1992 2 p.m. to 5 p.m., June 4, 1992 8 a.m. to 4 p.m.

ADDRESSES: Arkansas Excelsior Hotel, Three Statehouse Plaza, Little Rock, Arkansas 72201.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first come, first served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resources Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221-3082

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101-398, September 28, 1990.

Dated: May 4, 1992.

Edward D. Carlin,

Acting Regional Director, Midwest Region.

[FR Doc. 92-11772 Filed 5-19-92; 8:45 am]

BILLING CODE 4310-70-M

Sudbury, Assabet and Concord Rivers Wild and Scenic Study; Massachusetts; Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. app. 1 s 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, May 28, 1992.

The Committee was established pursuant to Public Law 101-628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will convene at 7:30 p.m. at the Great Meadows National Wildlife Refuge Headquarters, Weir Hill Road, Sudbury, MA, for the following purpose:

1. Welcome, introductions—Leslee Willitts;
2. Approval of minutes from 4/29/92 meeting;
3. Report of Nominating Subcommittee;
4. Short term work plan—Cassie Thomas;
   A. Discussion
   B. Establishment of Subcommittees
5. Opportunity for Public Comment;
6. Other Business;
   A. Next Meeting Dates and Location.

Dated: May 7, 1992.

Marie Rust,

Acting Regional Director.

[FR Doc. 92-11768 Filed 5-19-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-532-537 (Final)]

Certain Circular, Welded, Non-alloy Steel Pipes and Tubes From Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-532-537 (Final) under section 735(b) of the Tariff of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela of certain circular, welded, non-alloy steel pipes and tubes,[1] provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: April 24, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain circular, welded, non-alloy steel pipes and tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). These investigations were requested in a petition filed on September 24, 1991, by Allied Tube and Conduit Corp., Harvey, IL; American Tube Co., Phoenix, AZ; Bull Moose Tube Co., Gerald, MO; Century Tube Corp., Pine Bluff, AR; Sawhill Tubular Division, Cyclops Corp., Sharon, PA; Laclede Steel Co., St. Louis, MO; Sharon Tube Co., Sharon, PA; Western Tube and Conduit Corp., Long Beach, CA; and Wheatland Tube Corp., Collingswood, NJ.

Participation in the Investigation and Public Service List

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on June 24, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on July 9, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 2, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 7, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by § § 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rule.

[1] The products covered in these investigations are welded, non-alloy steel pipes and tubes, of circular cross section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing or mechanical applications, such as for fence tubing, and for the protection of electrical wiring, such as conduit shells.

The scope of these investigations is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in these investigations, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in these investigations.

For purposes of imports from Taiwan, "circular, welded, non-alloy steel pipes and tubes" are as defined above but do not include pipes and tubes with wall thicknesses of 1.65 mm (0.065 inches) or more that have outside diameters of 114.3 mm (4.5 inches) or less. These products, when imported from Taiwan, are currently assessed antidumping duties.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is July 2, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs in July 17, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 17, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § § 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with § § 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list) and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 11, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-11808 Filed 5-19-92; 8:45 am]

BILLING CODE 7020-02-M

Revised Schedule, Magnesium from Canada and Norway; Invs. Nos. 701-TA-309 and 731-TA-528 and 529 (Final)

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: May 12, 1992.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202-205-3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION: On February 18, 1992, the Commission instituted the subject antidumping investigations and issued a revised schedule to be followed in the subject countervailing duty investigation.[1] On May 11, 1992, the U.S. Department of Commerce extended the date for its final determinations in these investigations from May 18, 1992, to July 6, 1992. The Commission, therefore, is revising its schedule in these investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than July 3, 1992; the deadline for filing prehearing briefs is July 8, 1992; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on July 10, 1992; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on July 14, 1992; and the deadline for filing posthearing briefs is July 22, 1992.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E,[2] and part 207, subparts A and C.[3]

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 13, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-11809 Filed 5-19-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-549-(Preliminary)]

Sulfur Dyes From Hong Kong

AGENCY: International Trade Commission.

ACTION: Amendment of institution notice; discontinuation of investigation.

SUMMARY: On April 10, 1992, Sandoz Chemicals Corp., Charlotte, NC, filed a petition with the Commission and the U.S. Department of Commerce seeking the imposition of antidumping duties on imports of sulfur dyes, including sulfur vat dyes, from China, Hong Kong, India, and the United Kingdom. In response to that petition, the Commission instituted antidumping investigations Nos. 731-TA-548 through 551 (Preliminary) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of the industry in the United States is materially retarded, by reason of such imports from China, Hong Kong, India, and the United Kingdom (57 FR 13756, Apr. 17, 1992).

On May 4, 1992, the Commission was notified by Commerce that it was initiating antidumping investigations on sulfur dyes, including sulfur vat dyes, from China, India, and the United Kingdom. However, Commerce, pursuant to section 732a(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)), did not initiative an antidumping investigation on imports of such merchandise from Hong Kong. Accordingly, the Commission gives notice that its antidumping investigation concerning sulfur dyes from Hong Kong (investigation No. 731-TA-549 (preliminary) is discontinued.

EFFECTIVE DATE: May 13, 1992.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

Authority: The action is taken under authority of the Tariff Act of 1930, title VII.

Issued: May 13, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-11810 Filed 5-19-92; 8:45 am]

BILLING CODE 7020-02-M

[1] 57 FR 7790, Mar. 4, 1992.

[2] 19 CFR part 201.

[3] 19 CFR part 207.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32029]

Los Angeles County Transportation Commission, Exemption; Acquisition and 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission, on its own initiative, exempts Los Angeles County Transportation Commission (LACTC) from all obligations under subtitle IV arising from its acquisition from Southern Pacific Transportation Company (SP) of approximately 137 miles of track and easement in or near Los Angeles, CA.[1] This exemption is subject to the following conditions: (1) The parties, if they have not already done so, must enter into agreements allowing SP to continue to operate over the six lines not involved in Docket No. AB–12 (Sub-No 139X–141X) [2] and notify the Commission within 30 days that this has been done; (2) service over these six lines must continue pursuant to 49 U.S.C. subtitle IV until the Commission lawfully finds otherwise; and (3) the Commission's retention of jurisdiction to impose labor protective conditions if such conditions are required in the future.

DATES: This exemption will be effective on June 19, 1992. Petitions for stay must be filed by June 1, 1992, and petitions for reconsideration must be filed by June 9, 1992.

ADDRESSES: Send pleading referring to Finance Docket No. 32029 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Southern Pacific Transportation Company's representatives.

John McDonald Smith, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's full decision in docket No. AB–12 (Sub-No. 139X) *et al.* To purchase a copy of this decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357–4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: May 6, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners, Simmons, Phillips and Emmett. Commissioner Phillips commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–11814 Filed 5–19–92; 8:45 am]

BILLING CODE 7035–01–M

[1] The exact length cannot be determined because the parties' description of the Baldwin Park Line, (9) below, did not include ending milesposts. The lines involved are:

(1) The 1.60-mile Alla Branch, beginning at mile post 496.25 at the centerline of Sepulveda Blvd. In Culver City to milepost 497.85 at the south line of Panama Street in Los Angeles;

(2) The 9.64-mile Azusa Branch, beginning at milepost 497.55 near Bassett to milepost 507.19 near Azusa;

(3) The 11.08-mile State Street Branch, beginning at milepost 485.30 at Mission Road to milepost 496.38 at El Monte, plus an easement (the width and height of which is to be negotiated) on SP's property from milepost 484.95 to milepost 485.30;

(4) The 2.58-mile Yuma Main Line, a 40-feet wide easement beginning at milepost 494.97 at El Monte to milepost 497.55 near Bassett plus an easement for a grade separated crossing of the Yuma Main Line at a location to be negotiated;

(5) The 64.86-mile Saugus and Ventura Lines, a 40-feet wide portion of SP's property along the north side of SP's existing main line, extending westerly from milepost 478.21 near Fletcher Drive in Glendale to the vicinity of milepost 468, thence on the south side to milepost 449.4 near Saugus, and a 40-feet wide portion along the south side of SP's existing mainline extending westerly from milepost 462.45 at Burbank Junction to approximately milepost 446, thence on the north side to milepost 426.4 near Moorpark;

(6) The 12.7-mile West Santa Ana Branch, beginning at milepost 495.14 near Paramount to approximately milepost 507.84, the centerline of Beach Boulevard near Stanton;

(7) The 20.33-mile Burbank Branch beginning at milepost 446.17 near Chatsworth to approximately milepost 446.5 on the western property line of SP's Coast Maine Line at Burbank Junction;

(8) The 14.20-mile Santa Monica Branch, beginning at milepost 485.69 at the intersection of LACTC's "Blue Line" to milepost 499.89 at the east boundary of 17th Street, Santa Monica; and

(9) The Baldwin Park Branch, a line whose exact length is uncertain but which is described as follows: (i) Milepost 502.00 at Orange Avenue Junction extending east to the west boundary line of SP's Colton Main Line Cut Off; (ii) an easement for a grade-separated crossing of SP's Colton Main Line Cut Off; and (iii) east boundary line of SP's Colton Main Line Cut Off to the west right-of-way line of Rancho Avenue in San Bernardino; but (iv) excluding (A) the Atchison, Topeka & Santa Fe (AT&SF) right-of-way that bisects the line and (B) that portion of the line between milepost 514.37 and milepost 515.42 where SP is operating on AT&SF trackage, providing that SP shall assign such operating rights to LACTC if AT&SF consents.

The last three lines, (7)–(9), were the subject of SP's attempts to abandon service in Nos. AB–12 (Sub-No. 139X), AB–12 (Sub-No. 104X), and AB–12 (Sub-No. 141X). We have denied abandonment of these lines because the physical assets are no longer owned by SP, but we are granting SP the right to discontinue service over these lines: see the notice that is simultaneously being published in the **Federal Register** in No. AB–12 (Sub-No. 142X).

[2] These six lines are listed in note 1, above, branch lines (1)—(6).

[Finance Docket No. 32050]

Norfolk Southern Railway Co.—Trackage Rights Exemption—Eastern Alabama Railway, Inc.

Eastern Alabama Railway, Inc. (EARY) has agreed to grant trackage rights to Norfolk Southern Railway Company (NSR) over that portion of EARY's track at Anniston, AL, from a point formerly known as GP Junction, NSR milepost 737.3±, to a point 500 feet north of the north switch to Donoho Clay (approximately 11,417 ft.± north of GP Junction), including switches needed to access Huron Valley Steel, FMC Sand and Donoho Clay and crossover tracks now in place between the EARY and NSR lines, having a total combined distance of approximately 2.4 miles. The trackage rights will be effective on or about June 1, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: R. Allan Wimbish, Three Commercial Place, Norfolk, VA 23510-2191.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: May 14, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92-11816 Filed 5-19-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–12 (Sub-No. 142X)]

Southern Pacific Transportation Co.—Discontinuance Exemption—Los Angeles and San Bernardino Counties, CA

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of service exemption.

SUMMARY: On its own initiative under 49 U.S.C. 10505, the Commission is exempting Southern Pacific Transportation Company (SP) from the provisions of 49 U.S.C. 10903–10904 so as to permit its discontinuance of service over 15.53 miles of track in Los Angeles and San Bernardino Counties, CA.[1] The exemption will be subject to: (1) Standard labor protective conditions; and (2) compliance with section 106 of the National Historic Preservation Act. Pleadings relevant to this exemption have been filed in other dockets.[2]

DATES: This exemption will be effective on June 19, 1992. Petitions to stay must be filed by June 1, 1992. Petitions for reconsideration must be filed by June 9, 1992. Requests for a public use condition under 49 CFR 1152.28 are due by June 9, 1992. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) must be filed by May 30, 1992.

ADDRESSES: Send pleadings referring to No. AB–12 (Sub-No. 142X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Southern Pacific Transportation, Company's representatives:

John MacDonald Smith, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94205.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660. [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision in No. AB–12 (Sub-No. 139X) *et al.* To purchase a copy of this decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: May 6, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Phillips commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–11815 Filed 5–19–92; 8:45 am]

BILLING CODE 7035–01–M

[1] The discontinuance involves the following three branch lines:

Burbank Branch: Milepost 453.76 near Tarzana to milepost 457.92 near Van Nuys plus 0.34 miles of additional track added after the original mileposts were installed, for a total of 4.50 track miles.

Santa Monica Branch: Milepost 487.72, at or near Grand Avenue to milepost 494.64 at or near Culver Junction, California, 6.93 miles of track.

Baldwin Park Branch: Milepost 515.70 at or near Claremont in Los Angeles to milepost 519.80 at or near Upland in San Bernardino County, California, 4.1 miles of track.

[2] On September 13, 1991, SP filed two petitions for exemption to abandon (not merely discontinue service over) two of the lines at issue here, the 6.93-mile Santa Monica Branch and the 4.1-mile Baldwin Park Branch. Those cases were docketed as AB–12 (Sub-No. 140X) and AB–12 (Sub-No. 141X), respectively. On September 23, 1991, SP filed a notice of exemption, docketed as AB–12 (Sub-No. 139X) *et al.*, the Commission is dismissing the abandonments sought over these lines because SP no longer owns the lines' physical assets.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy and 28 CFR 50.7 notice is hereby given that on May 4, 1992 a proposed Consent Decree in *United States* versus *Gerald T. Fenton, Inc., et al.*, Civil Action No. 90–0903–NJH, was lodged with the United States District Court for the District of Columbia. The Consent Decree requires defendant Associated Builders, Inc. to pay $50,000 in civil penalties for alleged violations of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos promulgated pursuant to sections 112, 133 and 114 of the Clean Air Act, 42 U.S.C. 7412, 7413 and 7414, and codified at 40 CFR part 61, subpart M. The alleged violations took place at the Smithsonian Institution's National Museum of American History at 14th Street and Constitution Avenue, NW., Washington, DC. The Consent Decree also requires defendant Associated Builders, Inc. to comply with the requirements of the asbestos NESHAP during all demolition or renovation projects where Associated Builders, Inc. is an owner or operator, notify EPA and the appropriate state and local air pollution control authorities prior to any planned demolition or renovation (regardless of whether the Defendant believes that the facility contains asbestos containing materials or not), and assure that all persons engaging in asbestos removal for Associated Builders, Inc. (including its subcontractors) successfully complete an EPA approved asbestos abatement course.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Gerald T. Fenton, Inc., et al.*, DOJ Ref. #90–5–2–1–1424.

The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. If requesting a copy of the Consent Decree only, please enclose a check in the amount of $4.50 (25 cents per page reproduction charge) payable to the "Consent Decree Library".

John C. Cruden,

Chief Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 92–11782 Filed 5–19–92; 8:45 am]

BILLING CODE 4410–01–M

Consent Judgment in Action to Enjoin Violation of the Resource Conservation and Recovery Act ("RCRA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Grand Blanc Landfill, Inc.* (E.D. Michigan), Civil Action No. 87–40019, was lodged with the United States District Court for the Eastern District of Michigan on May 1, 1992. The Complaint filed by the United States alleged violations of RCRA and Various requirements of the interim status regulations for owners and operators of hazardous waste disposal facilities. The Consent Decree requires the defendant to pay a civil penalty of $20,000 in full settlement of the claims set forth in a complaint filed by the United States. The Consent Decree also obligates defendant to comply with RCRA by requiring defendant to complete post-closure in accordance with a state-approved post-closure plan, and to provide financial assurance for post-closure by making annual payments into a trust fund for a period of fifteen years.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC, 20530 and should refer to *United States* v. *Grand Blanc Landfill, Inc.*, D.O.J. Ref. No. 90–7–1–374.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney, Federal Building, 231 W. Lafayette, Detroit, Michigan, 48226; (2) the Region V office of the U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois, 60604; and (3) the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 2004 (202–347–2070). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW Box 1097, Washington, DC, 20004. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 92–11783 Filed 5–19–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree and Administrative Cost Recovery Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 15, 1992, a proposed partial Consent Decree in *United States* v. *Peirce, et. al.*, No. 83–CV–1623, was lodged with the United States District Court for the Northern District of New York. This Consent Decree supersedes the consent decree that was previously lodged with the Court on June 4, 1991. In addition, on or about May 13, 1992, a related administrative Cost Recovery Agreement was entered into by the Environmental Protection Agency ("EPA") and the United States Department of the Air Force.

The complaint in the *Peirce* action was filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, to recover costs incurred by EPA in taking response actions at the York Oil Superfund Site located in Moira, Franklin County, New York ("Site").

The proposed Consent Decree embodies an agreement by defendant Aluminum Company of America ("Alcoa") to design and implement a Phase I remedy selected by EPA for the first operable unit at the Site involving the cleanup of contaminated soil and groundwater. Alcoa has also agreed to perform the subsequent operation and maintenance for this remedial work, and to reimburse EPA for the first $315,000 of EPA's oversight costs and periodic review costs.

The Decree is a mixed funding decree, as it also contains an agreement by the EPA Hazardous Substances Superfund to reimburse Alcoa in an amount equal to the lesser of (1) $5,950,000 or (2) that amount which will result in Alcoa incurring 30% of the cost of the remedial design and remedial action for the Phase I remedy at the Site.

The Consent Decree also includes an agreement by certain federal facilities (the Department of the Army, the Department of the Air Force, and the Department of Transportation) to pay $7,700,000 into the York Oil Trust Fund, to be applied toward the cost of this cleanup.

With respect to the recovery of past costs, the Consent Decree requires Alcoa to reimburse EPA for $795,000 of the costs already incurred by EPA. The Department of the Army and the Department of Transportation have agreed to reimburse EPA in the amount of $913,500.00 for EPA's past costs.

On or about May 13, 1992, EPA and the Department of the Air Force entered into a separate administrative Cost Recovery Agreement, pursuant to which the Department of the Air Force has agreed to reimburse EPA in the amount of $136,500 for EPA's past costs. This Cost Recovery Agreement is attached as Appendix 5 to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree or the Cost Recovery Agreement. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Peirce, et al.*, D.O.J. Ref. 90–5–2–1–585.

The proposed Consent Decree, including the Cost Recovery Agreement, may be examined at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, at the office of the United States Attorney, Federal Building and Courthouse, 15 Henry Street, Binghamton, New York 19301, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $47.75 (25 cents per page reproduction cost) for the Consent Decree and all attachments, or in the amount of $21.25 for the Consent Decree and the administrative Cost Recovery Agreement (without any of the other attachments).

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–11824 Filed 5–19–92; 8:45 am]

BILLING CODE 4410–01–M

Consent Judgment in Action to Enjoin Violation of the Clean Water Act ("CWA")

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029 July 17, 1973, notice is hereby given that a Consent Decree in *United States* versus *Windsor Textile Processors, Inc. and Valmar Textile Processing, Inc.*, 86 Civ. 2717 (WCC) was lodged with the United States District Court for the Southern District of New York on May 6, 1992. The Consent Decree, signed by Windsor Textile Processors, Inc. ("Windsor"), provides, *inter alia*, for payment of a $20,000 civil penalty, compliance with the section 301 of the Clean Water Act ("CWA"), 33 U.S.C. 1311, and section 13 of the Rivers and Harbors Act ("Refuse Act"), 33 U.S.C. 407, implementation of a Best Management Practices ("BMP") plan at the facility, and stipulated penalties in the event of future noncompliance. The penalty amount takes into account documented limitations on Windsor's ability to pay.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* versus *Windsor Textile Processors, Inc.*, D.O.J. Ref. No. 90–5–1–1–2568.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of New York, 100 Church Street—19th Floor, New York, New York 10007; and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza,

New York, New York 10278. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, telephone number (202) 347–2072. In requesting a copy, please enclose a check in the amount of $2.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–11785 Filed 5–19–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—Arizona State University—Advanced Helicopter Electromagnetics Industrial Associates Program

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Arizona State University ("ASU") on March 26, 1992 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in membership of its Advanced Helicopter Electromagnetics Industrial Associates Program (the "Industrial Associates Program"). The notification was filed for the purpose of extending the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

International Business Machines Corporation, located in Owego, New York, is no longer a party to the Industrial Associates Program.

The Naval Air Test Center (now known as the Naval Air Warfare Center and located in Patuxent River, Maryland), through NASA Langley Research Center, participates in a supporting grant to ASU and on the advisory task force for the Industrial Associates Program.

The name of the Army Avionics Research and Development Administration located in Hampton, Virginia, as referenced in a prior notice, is corrected to be the Army Avionics Research and Development Activity.

No other changes have been made in either the membership or planned activity of the Industrial Associates Program.

On November 27, 1989, ASU filed its original notification pursuant to section 6(a) of the Act. The Department published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 10, 1990 (55 FR 925). On March 5, 1990, ASU filed an additional notification. The Department published a notice in response to this additional notification on April 13, 1990 (55 FR 14004).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–11786 Filed 5–19–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on April 10, 1992, filed a written notification on behalf of Bellcore and Bell Canada simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principle place of business in Livingston, New Jersey.

Bell Canada is a Canadian business corporation having a place of business in Ottawa, Canada.

Bellcore and Bell Canada entered into an agreement effective as of January 27, 1992, under which Bell Canada will participate in various Bellcore projects which Bellcore is currently undertaking for its owner companies and will collaborate with Bellcore on research, all directed to understanding telecommunications network architectures, concepts and service capabilities in support of exchange and exchange access telecommunications services. This will include exploration of such technologies as Integrated Services Digital Network ("ISDN"), screen-based telephony, common channel signaling and the Advanced Intelligent Network.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–11784 Filed 5–19–92; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (92–33)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 17931, Notice Number 92–25, April 28, 1992.

PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETING: May 21, 1992, 9 a.m. to 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Ms Lia LaPiana, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1433).

Dated: May 14, 1992.

Philip D. Waller,

Deputy Director, Management Operations Division.

[FR Doc 92–11787 Filed 5–19–92; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–312–DCOM; ASLBP No. 92–663–02–DCOM]

Sacramento Municipal Utility District; Establishment of Atomic and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station, Facility Operating License No. DRP–54, (Decommissioning Plan)

This Board is being established pursuant to a notice published by the Commission on March 19, 1992, in the **Federal Register** (57 FR 9577) entitled, "Consideration of Issuance of an Order Authorizing Decommissioning a Facility and Opportunity for Hearing." The Commission's order would involve approval of the Rancho Seco

Decommissioning Plan and authorize decommissioning of the Nuclear Generating Station.

The Board consists of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.
Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.
Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR § 2.701 (1980).

Issued at Bethesda, Maryland, this 13th day of May 1992.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92-11832 Filed 5-19-92; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A92-11]

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc III; H. Edward Quick, Jr.; Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

In the Matter of: Buckeye, Louisiana 71328 (Jim Miller, Petitioner).

Issued May 13, 1992.

Docket Number: A92-11.
Name of Affected Post Office: Buckeye, Louisiana 71328.
Name(s) of Petitioner(s): Jim Miller.
Type of Determination: Closing.
Date of Filing of Appeal Papers: May 11, 1992.
Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)]. Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders:

(A) The record in this appeal shall be filed on or before May 26, 1992.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Docket No. A92-11, Buckeye, Louisiana 71328

May 11, 1992—Filing of Petition.
May 13, 1992—Notice and Order of Filing of Appeal.
June 5, 1992—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)].
June 15, 1992—Petitioner's Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)].
July 6, 1992—Postal Service Answering Brief [see 39 CFR 30001.115(c)].
July 21, 1992 Petitioner's Reply Brief should Petitioners choose to file one [see CFR 3001.115(d)].
July 28, 1992—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].
September 8, 1992—Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 92-11743 Filed 5-19-92; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30697; File No. SR-NYSE-92-05]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Rule 452—Giving Proxies by Member Organization

May 13, 1992.

I. Introduction

On March 4, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change amending NYSE Rule 452—Giving Proxies by Member Organization. Notice of the proposal appeared in the **Federal Register** on March 26, 1992.[3] Two comments were received on the proposal.[4] As discussed below, this order approves the proposal.

II. Background

NYSE Rule 452 provides that a member organization may give a proxy to vote stock registered in its name, provided, among other things, that the beneficial owner of the shares has not exercised his right to vote the stock and that the action being voted upon does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.[5] According to the Exchange, it routinely reviews proxy materials and determines whether an action to be taken at a meeting "may affect substantially the rights or privileges of such stock." If the Exchange determines that the action may substantially affect shareholders, a member organization may not give a proxy to vote without instructions from the beneficial owner. Supplementary Material .11 to Rule 452 includes a list of 18 specific instances in which a member organization may not give a proxy to vote. For example, included in this list are situations involving the right of appraisal, the mortgaging of property, and the creating of preferred stock or increasing the authorized amount of an existing preferred stock.

In addition to the 18 specific items listed in the Supplementary Material to Rule 452, the Exchange has interpreted Rule 452 to preclude member organizations from voting without customer instructions in certain other situations, including a shareholder vote on the initial approval of an investment advisory contract.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] Securities Exchange Act Release No. 30499 (March 19, 1992), 57 FR 10511 (March 26, 1992).

[4] See note 8 and accompanying text, *infra*.

[5] Pursuant to NYSE Rule 451(b)(1), a member organization is required to forward all proxy material, as well as a request for voting instructions, to each beneficial owner of stock. On matters which may be voted without instruction under Rule 452, the member organization must provide a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock. Such statement may be made only when the proxy soliciting material is transmitted to the beneficial holder of the stock at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner twenty-five days or more before the meeting, however, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock.

It has been the Exchange's practice to view the initial approval of investment advisory contracts, and any material amendments to such contracts, as non-routine matters that are of a type that a member organization cannot vote on without specific client instruction. The Exchange has considered, however, that issues such as a one-year extension of the term of any such contract or a non-material amendment of any such contract constitute routine matters in respect of which member organizations may give a proxy.

III. Description of the Proposal

The Exchange proposes to amend its interpretation of Rule 452 [6] to allow member organizations to give a proxy on the initial approval of an investment advisory contract if the beneficial holder does not exercise his right to vote. The Exchange believes that such treatment is appropriate because the initial investment advisory contract is described in the prospectus the investor receives when making a decision to invest in these securities. However, because material amendments to investment advisory contracts would not be in the prospectus the investor initially receives, the Exchange will continue to preclude member organizations from giving proxies without specific client instructions in such situations.

In addition, the Exchange believes that this proposed rule change should make it easier for companies to obtain shareholder approval of an investment advisory contract as required by the Investment Company Act of 1940 ("1940 Act"). Pursuant to the 1940 Act,[7] approval of an investment advisory contract requires approval by the holders of the lesser of (1) 50 percent of the outstanding shares of the company or (2) 67 percent of the votes cast at a meeting at which at least 50 percent of the outstanding shares are present or represented by proxy. As a practical matter, it is often necessary to rely upon the latter of these alternative methods of meeting the requirement. For routine items, when a member organization is able to vote shares on which no instructions have been received from the beneficial owner, it is much easier to ensure that 50% of the outstanding shares are present or represented by proxy.

With regard to the initial approval of an investment advisory contract for which member organizations cannot vote shares on which no instructions have been received, it can be difficult to obtain the vote necessary under the 1940 Act. According to the Exchange, therefore, the mere presence at the meeting of member organizations representing shares for which no instructions have been received is the equivalent of having those shares voted against the contract. The Exchange states that a shareholder who has recently purchased shares and has not taken the trouble to return a proxy card to the member organization is probably unaware that his inaction is the equivalent of voting against the very investment advisory contracts that were described in the prospectus and were presumably a key factor in his investment decision.

The Exchange recognizes that when the investment advisor and the member organization are affiliated there is a potential conflict of interest if the member organization has full discretion on how to vote shares for which no instructions are received. Accordingly, consistent with its proxy voting policy in other situations involving potential conflicts of interest, the Exchange proposes that where the member organization is affiliated with the investment advisor, the member organization would be required to cast the votes of beneficial owners who fail to respond to the proxy solicitation "proportionately." The Exchange interprets "proportionately" to require the member organization to vote in the same "yes" and "no" proportion as that represented by the votes received from all other record holders of stock.

IV. Comments Received by the Commission

The Commission received two comment letters on the proposed rule change.[8] Both commenters support the NYSE's proposal to amend the interpretation of Rule 452 in order to ease the Exchange's proxy procedures regarding the initial approval of investment advisory contracts.

According to Calvert Group, the proposal will have the effect of reducing potential additional costs to shareholders incurred when a fund must resolicit votes or adjourn a meeting due to a member organization not having the authority to vote a certain action on behalf of a beneficial owner. ICI also believes that the proposal will reduce additional costs to both the fund and its shareholders, and states that these resultant cost savings could be realized without weakening investor protections.

According to ICI, in the case of a new fund that has yet to have its advisory contract approved, investors would have received a fund prospectus, which fully describes the advisory contract and fees in detail, prior to purchasing fund shares. Thus, these investors have already, in effect, approved the investment advisory contract by committing investment capital to a particular fund. ICI also states that shareholders will be further protected by the Exchange's proposal to require that when the advisor and member organizations are affiliated, the member vote in the same proportion as represented by the votes received from all other record holders. ICI believes that this requirement will adequately address any potential conflict of interest that may arise in that situation.

V. Discussion

The Commission finds that the NYSE's proposed rule change to allow member organizations to give a proxy on the initial approval of an investment advisory contract if the beneficial holder does not exercise his right to vote is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. More specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) [9] requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

Full and effective voting rights of investment company shareholders are an important aspect of the investment company structure. The Commission has reviewed carefully the NYSE's proposal to amend the interpretation of NYSE Rule 452 to determine whether it would lead to an erosion of the rights of beneficial owners of investment company shares. For the reason discussed below, the Commission finds that the NYSE proposal actually should make the current NYSE proxy procedures work to the benefit of beneficial holders of investment company shares.

The Commission acknowledges the dilemma faced by investment companies with regard to obtaining the required approval for an investment advisory

[6] The proposed rule change does not amend the text of Rule 452 or its Supplementary Material.

[7] See Sections 15(a) and 2(a)(42), 15 U.S.C. 80a–15 and 80a–2(a)(42) (1988).

[8] See letters to Jonathan G. Katz, Secretary, SEC, from Beth-ann Roth, Associate General Counsel, Calvert Group, Ltd. ("Calvert Group"), dated April 2, 1992; and from Amy B.R. Lancellotta, Associate General Counsel, Investment Company Institute ("ICI"), dated April 14, 1992.

[9] 15 U.S.C. 78f(b)(5) (1988).

contract under Section 15(a) of the 1940 Act.

As noted above, the Exchange's current practice of treating the initial approval of investment advisory contracts as non-routine matters creates added difficulty in achieving the vote necessary for approval under the 1940 Act. As the Exchange notes, the mere presence at the meeting of shares for which no instructions have been received by the member is the equivalent of having those shares voted against the contract.

While the Commission understands the problem inherent in the Exchange's current procedures, the Commission also believes shareholder rights should not be diminished. When balancing the interest of the affected investment companies against the interests of their shareholders, however, the Commission believes that approval of the proposal is appropriate.

As indicated by the Exchange and the commenters who support the proposal, the initial investment advisory contract is described fully in the prospectus distributed to all purchasers, including beneficial owners for whom member organizations or their nominees act as owners of record. When making the initial decision to invest in specific securities, the shareholder relies substantially upon the information disclosed in the prospectus. The Commission believes that by deciding to invest in a particular fund, these investors have, in effect, agreed that the investment advisory contract set forth in the prospectus will benefit and strengthen the company.

Purchasers who do not agree with these objectives, of course, would be expected to vote against approval of the investment advisory contract, to sell their shares, or not to purchase shares in the first place. Accordingly, the Commission believes it is not unreasonable for the Exchange to establish as a presumption underlying its proxy rules that a beneficial owner's failure to instruct a member organization how to vote in regard to an initial investment advisory contract should not be interpreted as or have the effect of voting against approval of that contract.

The Commission also believes that the NYSE's proposal to require that the member organization vote in the same proportion as represented by votes received from all other record holders when the advisor and the member organization are affiliated should prevent potential member abuse of the proposal. Essentially, this portion of the proposal safeguards against the possible unfair treatment of non-voting beneficial owners when a potential conflict of interest is present. The Commission believes that placing proportionality limitations on an affiliated member's voting ability should ensure that such member's method of voting is reasonably designed to reflect the overall voting trend of all record holders. This is consistent with the Exchange's proxy voting policy, which requires proportional voting in other situations where there exists a similar conflict of interest.

VI. Conclusion

For the reasons set forth above, the Commission believes that the proposed rule change is consistent with Section 6 of the Act.

It is therefore ordered, pursuant to section 19(b)(2) [10] of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-11758 Filed 5-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30693; International Series Release No. 385; File No. SR-PHLX-92-11]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Creation of an Options Floor Procedure Advice Dealing With Priority and Party Rules in Foreign Currency Options

May 12, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 20, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to create a new Options Floor Procedure Advice ("OFPA"), OFPA B-7, that states the Exchange's foreign currency options parity and priority rules as expressed in PHLX Rule 1014. Additionally, proposed OFPA B-7 includes a fine schedule in accordance with the Exchange's Minor Infraction Rule Plan. The text of the proposed rule change is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes OFPA B-7 in order to put into advice form that section of PHLX Rule 1014 which sets forth the method for determining parity and priority in foreign currency options trading crowds. Specifically, the language set forth in this proposed OFPA is identical to language codified in Rule 1014 and, thereby, furthers the Exchange's policy objectives regarding parity and priority as approved by the Commission.[1] The PHLX believes that placing this rule in the Exchange's Floor Advice Book will enable foreign currency options floor participants to have ready access to the provisions of the rule. Additionally, through its proposed fine schedule, proposed OFPA B-7 addresses minor instances of non-compliance with the Exchange's parity and priority rules.

The Exchange believes that proposed OFPA B-7 is consistent with section 11(a) of the Act, which provides certain exemptions from the structure in Section 11(a)(1) of the Act that "[i]t is unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion * * *" Specifically, the proposal requires any bid/offer for the account of a PHLX member, which relies on the exemption under section 11(a)(1)(G) of the Act, to

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[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) (1991).

[1] See Securities Exchange Act Release No. 28934 (March 4, 1991), 56 FR 10005.

yield time priority to any bid/offer for the account of a customer.

In addition, the Exchange believes the proposed rule change is consistent with Section 11(a) of the Act and Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, will promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 10, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Time Priority of Bids/Offers in Foreign Currency Options

Bids/Offers in foreign currency options, regardless of account type (i.e., ROT, members, customer) or size of bid/offer, or whether opening or closing, are all treated the same for purposes of determining time priority pursuant to rule 119, except that:

(i) All bids/offers of customer accounts for under 100 contracts have time priority over all other bids offers; and

(ii) Any bid/offer for the account of a member which relies on the exemption under section 11(a)(1)(G) of the Securities Exchange Act of 1934 must yield time priority to any bid/offer for the account of a customer.

Once a bid/offer has established priority, no bid/offer may gain parity at that price during that trade session until at least 10% of the size of the previous bid/offer or 100 contracts, whichever is greater, subsequently trades in that series. Priority is retained if the 10% or 100 contract threshold is not reached regardless of subsequent better bids/offers if the bids/offers then return to the level of the bid/offer with priority, provided that the person with priority did not relinquish his standing by withdrawing his bid/offer or leaving the crowd. If bids/offers on parity have priority over other subsequently voiced bids/offers in the crowd, the 10% or 100 contract threshold shall be calculated on the basis of the combined sizes of the bids/offers on parity.

For purposes of paragraph (h), account types are defined as follows: a ROT account is a market functions account as defined in Section 220.12 of Regulation T of the Board of Governors of the Federal Reserve Board; member account is any account of a non-market making member/participant or an associated person of such a member/participant or for which such a member/participant or any of its associated persons maintains discretionary control; and customer accounts are all accounts other than ROT, member or specialist accounts. Yielding requirements of this rule are not applicable to specialist accounts.

[2] 17 CFR 200.30-3(a)(12) (1989).

Misrepresenting the account type of an order which results in the establishment or priority in a manner inconsistent with this Advice may result in disciplinary action in accordance with the schedule below. In addition to the above, unbundling or soliciting customers to unbundle orders for the purpose of gaining parity or priority may result in disciplinary action in accordance with the schedule below.

Fine Schedule

B–7

1st Occurrence—$100.00
2nd Occurrence—$250.00
3rd and thereafter—Sanction is discretionary with Business Conduct Committee.

[FR Doc. 92–11757 Filed 5–19–92; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended May 8, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48137.
Date filed: May 4, 1992.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 565 (Tour Conductor Fares, Italy-Africa) r–1–080s r–2–080yy r–3–084s.

Proposed Effective Date: May 20, 1992.

Phyllis T. Kaylor

Chief, Documentary Services Division.

[FR Doc 92–11761 Filed 5–19–92; 8:45 am]
BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Under Subpart Q During the Week Ended May 8, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the

adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48135.
Date filed: May 4, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 1, 1992.
Description: Application of Carnival Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests the issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled foreign air transportation of persons, property and mail as follows: Between New York, NY or Miami, Florida on the one hand and Santo Domingo or Puerto Plata, Dominican Republic on the other.

Docket Number: 48141.
Date filed: May 5, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 2, 1992.
Description: Application of United Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, for a certificate of public convenience and necessity to authorize service between Denver, Colorado, and Mexico City, Mexico.

Docket Number: 48145.
Date filed: May 6, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 3, 1992.
Description: Joint Application of Northwest Airlines, Inc. and Hawaiian Airlines, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations, request approval of the transfer to Northwest of Hawaiian's certificate for Route 587, issued by Order 90–10–15, to provide air transportation of persons, property and mail between Honolulu, Hawaii and Fukuoka, Japan.

Docket Number: 46308.
Date filed: May 6, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 3, 1992.
Descrption: Application of Aerojecutivos, C.A., pursuant to section 402 of the Act and subpart Q of the Regulations for amendment of its foreign air carrier permit by amending Paragraph 5 of the original application as follows: (a) From a point or points in Venezuela, on the other (b) From Caracas, Venezuela to San Juan, Puerto Rico (c) From Caracas, Venezuela to Houston, Texas (d) Applicant requests permission to serve Aruba, Bonaire or Curacao as intermediate points on flights between Caracas and Miami, San Juan or Houston (e) Applicant also requests on-and-off-route charter authority as appropriate under part 212 of the Department's Economic Regulations.

Docket Number: 45523.
Date filed: May 8, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 5, 1992.
Description: Amendment No. 1 to the Application of Ontario Express Ltd. d.b.a., pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit for transportation between the points described, with no limitation in respect to size of aircraft for Toronto/Hamilton-Pittsburgh, but for each of the other routes with the limitation to aircraft having less than 60 seat capacity.

Docket Number: 47707.
Date filed: May 8, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 5, 1992.
Description: Amendment No. 1 to the Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests amendment of its certificate for Route 389 so as to add Santa Cruz, Bolivia, as an intermediate point on segment 1, and the right to integrate authority on Route 389 with that on Route 543.

Docket Number: 47708.
Date filed: May 8, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 5, 1992.
Description: Amendment No. 2 to the Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests amendment of its certificate for Route 543 so as to authorize service between the co-terminal points New York/Newark and Miami and the co-terminal points Caracas and Maracaibo, with the right to integrate this authority with Route 389.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92–11759 Filed 5–19–92; 8:45 am]
BILLING CODE 4910–62–M

Office of the Secretary

Fitness Determination of Southeast Aviation Group, Inc. d/b/a Southeast Airlines

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Commuter Air Carrier Fitness Determination, Order 92–5–22, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find Southeast Aviation Group, Inc. d/b/a Southeast Airlines fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act and to receive in transfer the commuter air carrier authority issued to Dawn Air, Inc., by Order 90–11–17, November 9, 1990.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 26, 1992.

FOR FURTHER INFORMATION CONTACT: Carol Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: May 13, 1992.

Patrick V. Murphy, Jr.,
Deputy Assistant Secretary for Policy and International Affairs.
[FR Doc. 92–11760 Filed 5–19–92; 8:45 am]
BILLING CODE 4910–62–M

Coast Guard

[CGD 92–035]

Meeting of the Chemical Transportation Advisory Committee (CTAC)

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on the Revision of the Regulations for Barges Carrying Bulk Liquid Hazardous Materials Cargoes, title 46 Code of Federal Regulations (CFR) part 151, of the Chemical Transportation Advisory Committee (CTAC) will hold a meeting on Friday, June 19, 1992 in room 4315, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The meeting is scheduled to begin at 9:30 a.m. and end at 3:30 p.m.

The purpose of the meeting is to continue work to fulfill the tasking of the Subcommittee which is to review 46 CFR part 151, determine areas in need of updating and revision, and make recommended changes. The Subcommittee will review the progress of the four Subcommittee working groups formed to review the following areas:

1. Operations/Administrative/Inspection;
2. Construction/Design/Equipment;

3. Cargo Classification/Special Requirements; and
4. New Regulations for Liquefied Flammable and Compressed Gases.

The meeting is open to the public. Members of the public may present written or oral statements. Persons interested in attending the meeting or participating on a working group are requested to contact Mr. Thomas Micklas, Chairman of the Subcommittee at (713) 868–1661.

FOR FURTHER INFORMATION CONTACT: Commander John Aherne, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC 20593, (202) 267–0084.

Dated: May 14, 1992.

D.F. Sheehan,

Acting Deputy Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92–11805 Filed 5–19–92; 8:45 am]

BILLING CODE 4910–14–M

Federal Transit Administration

FTA Sections 3 and 9 Grant Obligations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102–143, signed into law by President George Bush on October 28, 1991, contained a provision requiring the Federal Transit Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to Sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9301, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The Section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The Section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute FTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
City of Montgomery—Montgomery Area Transit System, Montgomery, AL	AL–03–0010–00	$3,339,960	04/07/92
Town of Ridgeville, Gadsden, AL	AL–03–0011–00	21,324	04/09/92
Los Angeles County Transportation Commission, Los Angeles, CA	CA–03–0340–00	4,845,000	04/24/92
Santa Clara County Transit District, San Jose, CA	CA–03–0382–00	12,750,000	04/27/92
Connecticut Department of Transportation, Connecticut	CT–03–0086–00	28,145,360	04/27/92
Brevard County Commissioners—Space Coast Area Transit, Melbourne-Palm Bay, FL	FL–03–0110–00	420,000	04/01/92
Lakeland Area Mass Transit District, Lakeland, FL	FL–03–0118–00	1,774,800	04/27/92
City of Baton Rouge, Baton Rouge, LA	LA–03–0050–00	4,373,552	04/09/92
St. James Parish, Louisiana	LA–03–0051–00	213,092	04/09/92
Mass Transit Administration, Baltimore, MD	MD–03–0052–01	2,025,000	04/09/92
Bi-State Development Agency, St. Louis, MO-IL	MO–03–0027–03	15,870,000	04/21/92
Kansas City Area Transportation Authority, Kansas City, MO-KS	MO–03–0033–00	4,400,000	04/27/92
North Carolina Department of Transportation, North Carolina	NC–03–0026–01	4,095,752	04/07/92
Niagara Frontier Transportation Authority, Buffalo-Niagara Falls, NY	NY–03–0268–00	7,343,740	04/07/92
Rochester-Genesee Regional Transportation Authority, Rochester, NY	NY–03–0273–00	2,500,000	04/07/92
Cambria County Transit Authority, Johnstown, PA	PA–03–0221–00	682,920	04/07/92
Transportation and Motor Buses for Public Use Authority, Aitoona, PA	PA–03–0222–00	2,000,000	04/07/92
Port Authority of Allegheny County, Pittsburgh, PA	PA–03–0225–00	9,000,000	04/07/92
City of Laredo, Laredo, TX	TX–03–0147–00	3,000,000	04/15/92
Intercity Transit, Olympia, WA	WA–03–0070–00	1,500,000	04/09/92

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Alameda-Contra Costa Transit District, San Francisco-Oakland, CA	CA–90–X468–00	$18,723,740	04/24/92
South Coast Area Transit, Oxnard-Ventura, CA	CA–90–X494–00	266,400	04/24/92
South Coast Area Transit, Oxnard-Ventura, CA	CA–90–X495–00	192,000	04/24/92
Waterloo Metro Transit Authority, Waterloo-Cedar Falls, IA	IA–90–X136–00	436,910	04/28/92
City of East Dubuque, Dubuque, IL-IA	IL–90–X201–00	3,611	04/28/92
Suburban Mobility Authority For Regional Transportation, Detroit, MI	MI–90–X150–00	7,234,079	04/06/92
Orange County, Newburgh, NY	NY–90–X222–00	18,471	04/09/92
Washington State Dept. of Trans. Marine Division, Washington	WA–90–X106–01	299,301	04/28/92
City of Everett Transit, Seattle, WA	WA–90–X126–00	945,489	04/27/92

Issued on: May 15, 1992.

Brian W. Clymer,

Administrator.

[FR Doc. 92-11817 Filed 5-19-92; 8:45 am]

BILLING CODE 4910-57-M

Maritime Administration

[Docket P-005]

Interpretation of the Fourth Exception to Section 506 of the Merchant Marine Act, 1936, as Amended.

On March 25, 1992, there was published in the **Federal Register** a notice by the Maritime Administration of a Policy Consideration, docketed P-005, asking for comments on four stated issues. The docket concerns interpretation of the Fourth Exception to section 506 of the Merchant Marine Act, 1936, as amended, regarding operation of vessels built with the aid of construction-differential subsidy in a certain domestic trade.

On April 13, 1992 a second notice in this docket was published in the **Federal Register** extending the time for the filing of comments until the close of business May 8, 1992. The notice also set forth certain clarifications of the earlier notice among which was that the submission of comments on both procedural and substantive issues would be proper. One of the procedural issues raised by the comments was the desirability of an opportunity for interested parties to file reply comments. Eight comments were filed in the docket raising a substantial number of important considerations. In order to provide interested parties an opportunity to address all of the issues raised by the comments, the Maritime Administration, as a matter of discretion, will allow 30 days from the date of this notice for reply comments to be filed.

Dated: May 15, 1992.

By Order of the Deputy Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 92-11818 Filed 5-19-92; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 14, 1992.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0889

Form Number: IRS Forms 8275 and 8275-R

Type of Review: Resubmission

Title: Disclosure Statement and Regulation Disclosure Statement

Description: Internal Revenue Code (IRC) section 6662 imposes accuracy related penalties for substantial understatement of tax liability or negligence or disregard of rules and regulations. Section 6694 imposes similar penalties on return preparers. Regulations §§ 1.6662-4(e) & (f) provide for reduction of these penalties if adequately disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to a regulation, new Form 8275-R

Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations

Estimated Number of Respondents/Recordkeepers: 595,000

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 2 hours, 23 minutes

Learning about the law or the form: 30 minutes

Preparing and sending the forms to the IRS: 34 minutes

Frequency of Response: Annually

Estimated Total Reporting/Recordkeeping Burden: 3,365,000

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-11789 Filed 5-19-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 14, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the TeleFile Surveys described below by mid-June 1992, the Internal Revenue Service is requesting a less than 60-day review and approval from the Office of Management and Budget (OMB). IN accordance with 5 CFR 1320.15, the proposed surveys are being published as part of this notice.

Internal Revenue Service

OMB Number: New

Form Number: None

Type of Review: New Collection

Title: TeleFile Surveys

Description: These surveys are being conducted to help the Service evaluate TeleFile and to initiate recommendations for changes and improvements. Participants will be taxpayers who used TeleFile to file a return, taxpayers who tried TeleFile but did not file a return, and taxpayers who, although eligible to use TeleFile, elected not to file a return by TeleFile.

Respondents: Individuals or households

Estimated Number of Respondents: 9,000

Estimated Burden Hours Per Respondent: 15 minutes

Frequency of Response: Other (One-time Survey)

Estimated Total Reporting Burden: 1950 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and

Budget, room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

(Lines will be provided on all surveys for questions where taxpayers must write in answers.)

Survey #
OMB #1545–XXXX
Expiration date:

TeleFile Participant Survey

Please take a few minutes to complete the questionnaire, and return it in the self-addressed, stamped envelope.

Circle the number which corresponds to your answer.

Thank you for your coopeation.

1. How important was each of the following items in your decision to use TeleFile? *(Circle a Number From 1 to 4 for Each Item)*

	Not at all important	Not too important	Somewhat important	Very important
a. Easy to file	1	2	3	4
b. Convenient	1	2	3	4
c. Inexpensive	1	2	3	4
d. Clearly written instructions	1	2	3	4
e. Receive a refund quickly	1	2	3	4
f. Did not have to pay someone to prepare my return	1	2	3	4
g. Not time consuming	1	2	3	4
h. TeleFile calculated my refund or the amount I owed	1	2	3	4
i. Other (Please explain):	1	2	3	4

1a. Of the items listed above, circle the letter of the one which was most important.

2. Before calling TeleFile, how long did it take you to prepare the Form 1040–TEL?

1 15 minutes or less
2 16 to 30 minutes
3 31 to 45 minutes
4 46 to 60 minutes
5 more than 60 minutes

3. To the best of your memory, *exactly* how long did it take you to prepare the Form 1040–TEL?

_____

4. Compared to filing a regular Form 1040EZ, TeleFile took:

1 Much less time
2 A little less time
3 No different
4 A little more time
5 Much more time
6 Not sure

5. How many times did you call TeleFile, including the call when your return was accepted? *(If 1, skip to question 7)*

1 2 3 4 5 more than 5

6. Why did you call more than once? *(Circle all that apply)*

1 I did not have all my W–2(s)
2 I did not have all my Forms 1099 or other interest income statements
3 I was disconnected
4 The line was busy
5 I was interrupted during the phone call
6 Other (Please explain):

7. Did you receive a refund?

1 Yes
2 No

7a. If yes, about how long after you called TeleFile did you receive your refund?

1 1–2 weeks
2 2–3 weeks
3 3–4 weeks
4 4–5 weeks
5 5–6 weeks
6 more than 6 weeks
7 not sure

8. Compared to a regular Form 1040EZ, the written instructions for TeleFile were:

1 Much easier
2 A little easier
3 No different
4 A little more difficult
5 Much more difficult
6 Not sure

9. Compared to filing a regular Form 1040EZ, TeleFile was:

1 Much easier
2 A little easier
3 No different
4 A little more difficult
5 Much more difficult
6 Not sure

10. If you had not used TeleFile, how would you have filed your return?

1 Prepared a regular Form 1040EZ myself
2 Prepared Form 1040EZ myself, but paid a tax preparer to file it electronically
3 Paid a tax preparer to file a regular Form 1040EZ
4 Paid a tax preparer to prepare Form 1040EZ and file it electronically
5 Had a friend or relative prepare a paper Form 1040EZ
6 Other (Please explain):

11. How did you file your tax return the year before (1991)?

1 Prepared a regular Form 1040EZ myself
2 Prepared Form 1040EZ myself, but paid a tax preparer to file it electronically
3 Paid a tax preparer to file a regular Form 1040EZ
4 Paid a tax preparer to prepare Form 1040EZ and file it electronically
5 Had a friend or relative prepare a paper Form 1040EZ
6 Other (Please explain):

12. If TeleFile is available next year and you are still eligible, how likely will you be to use it?

1 Definitely will (Skip to question 14)
2 Probably will (Skip to question 14)
3 Probably will not
4 Definitely will not

13. Which *one* of the following statements best describes why you probably will not use TeleFile next year?

1 Filing a regular Form 1040EZ is less complicated
2 My refund did not arrive faster than the year before
3 TeleFile took more time than filing a regular Form 1040EZ
4 I would prefer IRS not calculate my refund or taxes owed
5 I would have to send in the Form 1040-TEL anyway
6 Other (Please explain):

14. Some people have suggested that the following changes could be made to the TeleFile system. How important are each of these changes to you? (circle a number from 1 to 4 for each item)

	Not at all important	Not too important	Somewhat important	Very important
a. Use any telephone (not just a Touch-Tone phone)	1	2	3	4
b. Do not require sending paper form	1	2	3	4
c. Pay taxes owed by credit card	1	2	3	4
d. Direct Deposit my refund into my bank account	1	2	3	4
e. Other: (Please explain)	1	2	3	4

15. What other suggestions do you have that might improve the TeleFile system?

16. Age

1 Less than 18
2 18–24
3 25–37
4 38–49
5 50–64
6 65 or older

17. Education

1 Less than high school
2 High school graduate
3 Some college or vocational school
4 College graduate

18. Income

1 Less than $10,000
2 $10,001–$20,000
3 $20,001–$30,000
4 $30,001–40,000
5 $40,001–$50,000
6 $50,000+

19. Occupation

1 Student
2 Other (Specify):

Thank you for Participating!

Paperwork Reduction Act Notice

We ask for this information to carry out the Internal Revenue laws of the United States. Your response is voluntary. The time needed to complete this survey will vary, depending on individual circumstances. The estimated average time is 10 minutes. If you have any suggestions for making this survey more simple, we would be happy to hear from you. You can write to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Attention: IRS Reports Clearance Officer; T:FP, and to the Office of Management and Budget, Paperwork Reduction Project (OMB 1545–), Washington, DC 20503. Please do not send your completed survey to these addresses.

Survey #

OMB #1545–XXXX

Expiration date:

TeleFile Non-User Survey

Please take a few minutes to complete the questionnaire, and return it in the self-addressed, stamped envelope. Circle the number which corresponds to your answer.

Thank you for your cooperation.

1. How many times did you try to call TeleFile?

1 2 3 4 5 more than 5

2. How much did each of the following contribute to you not completing the phone call and filing your return using TeleFile? (circle a number from 1 to 4 for each item)

	Not at all	Not much	Some	A great deal
a I did not have all my Forms W–2	1	2	3	4
b I did not have all my Forms 1099 or other interest income statements	1	2	3	4
c I was disconnected	1	2	3	4
d The telephone line was busy	1	2	3	4
e I was interrupted during the phone call	1	2	3	4
f I could not understand the instructions on the phone	1	2	3	4
h Other (Please explain):	1	2	3	4

2a. Of the items listed above, circle the letter of the one which was most important.

3. How did you file your tax return this year (1992)? (choose one)

1 Prepared a regular Form 1040EZ myself
2 Prepared Form 1040EZ myself, but paid a tax preparer to file it electronically
3 Paid a tax preparer to file a regular Form 1040EZ
4 Paid a tax preparer to prepare Form 1040EZ and file it electronically
5 Had a friend or relative prepare a paper Form 1040EZ
6 Other (Please explain):

3a. Why did you prefer this method? (Please explain):

4. If you prepared your own Form 1040EZ, how long did it take?

1 15 minutes or less
2 16 to 30 minutes
3 31 to 45 minutes
4 46 to 60 minutes
5 more than 60 minutes
6 did not prepare myself (skip to question 6)

5. To the best of your memory, *exactly* how long did it take you to prepare the Form 1040EZ

_____

6. Did you receive a refund this year?

1 Yes
2 No

6a. If yes, about how long after you filed your return did you receive your refund?

1 1–2 weeks
2 2–3 weeks
3 3–4 weeks
4 4–5 weeks
5 5–6 weeks
6 more than 6 weeks
7 not sure

7. How did you file your tax return the year before (1991)? (choose one)

1 Prepared a regular Form 1040EZ myself
2 Prepared Form 1040EZ myself, but paid a tax preparer to file it electronically
3 Paid a tax preparer to file a regular Form 1040EZ
4 Paid a tax preparer to prepare Form 1040EZ and file it electronically
5 Had a friend or relative prepare a paper Form 1040EZ
6 Other (Please explain):

8. If TeleFile is available next year and you are eligible, how likely will you to be use it?

1 Definitely will (skip to question 10)
2 Probably will (skip to question 10)
3 Probably will not
4 Definitely will not

9. Which *one* of the following statements best describes why you probably will not use Telefile next year?

1 Filing a regular Form 1040EZ is less complicated
2 TeleFile took more time than filing a regular Form 1040EZ
3 I would prefer IRS not calculate my refund or taxes owed
4 I would have the send in the Form 1040–TEL anyway
5 Other (Please explain):

10. Some people have suggested that the following changes could be made to the TeleFile system. How important are each of these changes to encourage you to use TeleFile? (circle a number from 1 to 4 for each item).

	Not at all important	Not too important	Somewhat important	Very important
a. Use any telephone (not just a Touch-Tone phone)	1	2	3	4
b. Do not require sending paper form	1	2	3	4
c. Pay taxes owed by credit card	1	2	3	4
d. Direct Deposit my refund into my bank account	1	2	3	4
e. Other: (Please explain)	1	2	3	4

11. What other suggestions do you have that might improve the TeleFile system?

12. Age
1 Less than 18
2 18–24
3 25–37
4 38–49
5 50–64
6 65 or older

13. Education
1 Less than high school
2 Hifh school graduate
3 Some college or vocational school
4 College Graduate

14. Income
1 Less than $10,000
2 $10,001–$20,000
3 $20,001–$30,000
4 $30,001–$20,000
5 $40,001–$49,999
6 $50,000 +

15. Occupation
1 Student
2 Other (Specify):

Thank you for participating!

Paperwork Reducation Act Notice

We ask for this information to carry out the Internal Revenue Laws of the United States. Your response is voluntary. The time needed to complete this survey will vary, depending on individual circumstances. The estimated average time is 10 minutes. If you have any suggestions for making this survey more simple, we would be happy to hear from you. You can write to the Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. 20224, Attention: IRS Reports Clearance Officer: T:FP, and to the Office of Management and Budget, Paperwork Reduction Project (OMB 1545–), Washington, D.C. 20503. Please do not send your completed survey to these addresses.

Survey #
OMB # 1545–XXXX
Expiration date:

TeleFile Non-Participation Survey

Please take a few minutes to complete the questionnaire, and return it in the self-addressed, stamped envelope. Circle the number which corresponds to your answer.

Thank you for your cooperation.

1. Do you remember the TeleFile tax package which gave you the option of filing your tax return by telephone?
1 Yes (continue)
2 No (Skip to question 3)

2. How important was each of the following in your decision to not use TeleFile? (Circle a number from 1 to 4 for each item)

	Not at all important	Not too important	Somewhat important	Very important
a I did not have a Touch-Tone phone	1	2	3	4
b Someone else filled out my tax return	1	2	3	4
c Instructions were too complicated	1	2	3	4
d I had to send in the paper form anyway	1	2	3	4
e Form 1040EZ looked just as easy	1	2	3	4
f I don't like the idea of filing my taxes over the phone	1	2	3	4
g I don't trust IRS to tell me my refund or taxes owned	1	2	3	4
h I'd rather file a paper Form 1040EZ	1	2	3	4
i Too much trouble	1	2	3	4
j Other (Please explain):	1	2	3	4

2a. Of the items listed above, circle the letter of the one which was most important.

3. How did you file your tax return this year (1992)? (Choose one)
1 Prepared a regular Form 1040EZ myself
2 Prepared 1040EZ myself, but paid a tax preparer to file it electronically
3 Paid a tax preparer to file a regular 1040EZ
4 Paid a tax preparer to prepare 1040EZ and file it electronically
5 Had a friend or relative prepare a paper 1040EZ
6 Other (Please explain):

3a. Why did you prefer this method? (Please explain):

4. If you prepared your own Form 1040EZ, how long did it take?
1 15 minutes or less
2 16 to 30 minutes
3 31 to 45 minutes
4 46 to 60 minutes
5 more than 60 minutes
6 did not prepare myself (skip to question 6)

5. To the best of your memory, *exactly* how long did it take you to prepare the Form 1040EZ?

_____

6. Did you receive a refund this year?
1 Yes
2 No

6a. If yes, about how long after you called filed your return did you receive your refund?
1 1–2 weeks
2 2–3 weeks
3 3–4 weeks

4 4–5 weeks
5 5–6 weeks
6 more than 6 weeks
7 not sure

7. How did you file your tax return the year before (1991)?

1 Prepared Form 1040EZ myself
2 Had a friend or relative prepare a paper Form 1040EZ
3 Paid a tax preparer to file a paper Form 1040EZ
4 Prepared Form 1040EZ myself and paid a tax preparer to file it electronically
5 Paid a tax preparer to prepare Form 1040EZ and file it electronically
6 Other (Please explain):

8. If TeleFile is available next year and you are eligible, how likely will you be to use it?

1 Definitely will (skip to question 10)
2 Probably will (skip to question 10)
3 Probably will not
4 Definitely will not

9. Which *one* of the following statements bests describes why you will probably not use Telefile next year?

1 Filing a regular Form 1040EZ is less complicated
2 TeleFile takes more time than filing a regular Form 1040EZ
3 I would prefer IRS not calculate my refund or taxes owed
4 I would have the send the Form 1040–TEL anyway
5 Other (Please explain):

10. Some people have suggested that the following changes could be made to the TeleFile system. How important are each of these changes to encourage you to use TeleFile? (Circle a number from 1 to 4 for each item)

	Not at all important	Not too important	Somewhat important	Very important
a. Use any telephone (not just a Touch-Tone phone)	1	2	3	4
b. Do not require sending paper form	1	2	3	4
c. Pay taxes owed by credit card	1	2	3	4
d. Direct Deposit my refund into my bank account	1	2	3	4
e. Other: (Please explain)	1	2	3	4

11. What other suggestions do you have that might improve the TeleFile system?

12. Age

1 Less than 18
2 18–24
3 25–37
4 38–49
5 50–64
6 65 or older

13. Education

1 Less than high school
2 High school graduate
3 Some college or vocational school
4 College Graduate

14. Income

1 Less than $10,000
2 $10,001–$20,000
3 $20,001–$30,000
4 $30,001–$40,000
5 40,001–$50,000
6 $50,000 +

15. Occupation

1 Student
2 Other (Specify):

Thank You for Participating!

Paper Reduction Act Notice

We ask for this information to carry out the Internal Revenue laws of the United States. Your response is voluntary. The time needed to complete this survey will vary, depending on individual circumstances. The estimated average time is 10 minutes. If you have any suggestions for making this survey more simple, we would be happy to hear from you. You can write to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC., 20224, Attention: IRS Reports Clearance Officer; T:FP, and to the Office of Management and Budget, Paperwork Reduction Project (OMB1545–), Washington, DC., 20503. Please do not send your completed survey to these addresses.

[FR Doc. 92–11790 Filed 5–19–92; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 535–7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not sent requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 11, 1992.
By direction of the Secretary.
Frank E. Lalley,
Associate Deputy, Assistant Secretary for Information, Resources Policies and Oversight.

Extension

1. Patient Satisfaction Survey (PSS), VA Forms 10–1465d through h and j, and Food Service and Nutritional Care Analysis, VA Form 10–5387.

2. The surveys are recurring comprehensive evaluations of VA patients' satisfaction with health care they receive. They meet medical, management and legislative requirements and help assure that VA

maintains a high level of care to the nation's veterans.

3. Individuals or households.

4. 105,920 hours.

5. 8 minutes.

6. Quarterly.

7. 745,600 respondents.

[FR Doc. 92-11825 Filed 5-19-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 98
Wednesday, May 20, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m. Wednesday, May 27, 1992.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC:

The Board will consider the following:

1. Monthly Reports
   A. District Banks Directorate
   B. Housing Finance Directorate

PORTIONS CLOSED TO THE PUBLIC:

The Board will consider the following:

1. Approval of the April Board Minutes
2. Legislative/Strategic Discussion
   A. New System Strategic Plan
   B. Legislative Update
3. Examination and Regulatory Oversight Reports
4. Office of Inspector General Semi-Annual Update
5. Community Investment Program Update
6. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(2), (6), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (6), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 92–11989 Filed 5–18–92; 3:41 pm]

BILLING CODE 6725–01–M

NATIONAL WOMEN'S BUSINESS COUNCIL

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100–533 as amended, the National Women's Business Council announces a forthcoming Council meeting. This meeting is a planning session for the direction and activities of the Council for the next eighteen months.

DATE:

May 26, 1992, 1:00 p.m.–5:00 p.m.
May 27, 1992, 8:30 a.m.–4:00 p.m.
May 28, 1992, 8:45 a.m.–12:00 p.m.

PLACE:

May 26, 1992—Department of Commerce
May 27, 1992—Small Business Administration
May 28, 1992—Small Business Administration

STATUS: Open to the public.

CONTACT: Wilma Goldstein, Executive Director or Paula Breitweiser, Hearing Coordinator National Women's Business Council, 409 Third Street, SW., Suite 7425, Washington, DC 20024, (202) 205–3850.

Wilma Goldstein,

Executive Director, National Women's Business Council.

[FR Doc. 92–11982 Filed 5–18–92; 3:00 pm]

BILLING CODE 6820–AB–M

Corrections

Federal Register
Vol. 57, No. 98
Wednesday, May 20, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Research Foundation of SUNY at Albany, et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 92-10460 appearing on page 19281 in the issue of Tuesday, May 5, 1992, make the following corrections:

1. In the second column, in the eighth line, "2991" should read "1991".

2. In the same column, in docket number 92-024, in the eighth line, "and intense" should read "an intense".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on the Clinical Practice Guideline for Diagnosis and Treatment of Heart Failure Secondary to Coronary Vascular Disease

Correction

In notice document 92-11040 beginning on page 20280 in the issue of Tuesday, May 12, 1992, make the following correction:

On the same page, in the second column, in the eighth line. "June 16, 1992," should read "June 26, 1992,". For the convenience of the reader, the first paragraph is reprinted below:

A public meeting to address the guideline for the diagnosis and treatment of heart failure secondary to coronary vascular disease and to provide an opportunity for interested parties to contribute relevant information and comments will be held as follows: Friday, June 26, 1992, 9 a.m. to 12 p.m., Los Angeles Airport Marriott, 5855 W. Century Blvd., Los Angeles, CA 90045, 310–641–5700.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

HIV/AIDS and Related Diseases Among Substance Abusers; Community Based Outreach and Intervention Demonstration Program (Short Title—AIDS Outreach for Substance Abusers)

Correction

In notice document 92-10733 beginning on page 19624 in the issue of May 7, 1992, on page 19634, in the third column, in the table, the receipt date should read "July 10, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0020]

Drug Export; Coagulation Factor IX (Human), Affinity Purified, Solvent Detergent Treated

Correction

In notice document 92-1677 beginning on page 2752 in the issue of Thursday, January 23, 1992, make the following correction:

On page 2752, in the third column, in the last paragraph, in the third line, "February 4, 1992," should read "February 3, 1992,".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18684; 812-7865]

Merrill Lynch Balanced Fund for Investment and Retirement, et al.; Notice of Application

Correction

In notice document 92-10432 beginning on page 19321 in the issue of Tuesday, May 5, 1992, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

federal register

Wednesday
May 20, 1992

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 264, and 268
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, and 268

[FRL-4130-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule, tentative response to Chemical Manufacturers Association petition, and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing two approaches for amending its regulations under the Resource Conservation and Recovery Act (RCRA) for hazardous waste identification. Today's proposed rule is called the Hazardous Waste Identification Rule (HWIR). The first approach would establish concentration-based exemption criteria (CBEC) for listed hazardous wastes, wastes mixtures, derivatives, and media (including soils and ground-water) contaminated with certain listed hazardous wastes for exiting RCRA Subtitle C management requirements. The second approach proposed would establish "characteristic" levels for listed hazardous wastes, wastes mixtures, derivatives, and media (including soils and ground-water) contaminated with certain listed hazardous wastes for both entering and exiting RCRA Subtitle C via an expansion of the number of toxic constituents in the Toxicity Characteristics (TC) rule. This approach is referred to as the Expanded Characteristics Option (ECHO).

Under the CBEC approach, listed wastes and contaminated media meeting this CBEC would no longer be subject to some of the hazardous waste management requirements under subtitle C of RCRA. The Agency is proposing that the exemption be self-implementing for both wastes and media. Generators wishing to take advantage of the CBEC exemption must test their wastes, submit a notification and certification to the Agency providing specified information on the waste and, the process from which the waste is generated, and waste management practices. No Agency review of sampling plans or waste analysis data, or prior Agency approval, would be required before wastes or media could be managed as non hazardous. Generators would be required to re-test their wastes or media and re-submit notifications and certifications annually for the first two years, and every three years thereafter.

Under the ECHO approach, listed wastes and contaminated media which do not exhibit a characteristic would not be regulated by the hazardous waste management requirements under subtitle C of RCRA. To implement this approach, today's notice proposes to revise the current TC rule to include as many additional appendix viii constituents as possible. For all listed wastes whose constituents are included in the expanded characteristics, the mixture and derived-from rules would not apply. Consistent with the current TC, generators (whose hazard could be evaluated with the expanded TC) could test their wastes or rely on their knowledge of the waste to determine if their waste exhibited a characteristic. Generators would be required to provide the authorized State (or EPA) with a one time notice for wastes exiting the subtitle C requirements.

The Agency has endeavored to develop exemption requirements which have a practical impact and make the exemptions available to all generators managing listed waste and contaminated media meeting the exemption levels proposed in today's notice. The implementation provisions of today's proposal reflect a balancing of the Agency's informational needs for oversight and enforcement with the practical resource considerations of the generator.

This notice also contains the Agency's tentative response to a petition for rulemaking submitted by the Chemical Manufacturers Association. The Agency requests comment on all aspects of this proposal.

DATES: EPA will accept public comments on this proposed rule until July 20, 1992. Comments postmarked after this date may not be considered. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by June 4, 1992.

ADDRESSES: The public must send an original and two copies of their comments to: EPA RCRA Docket (S-212) (OS-305), 401 M Street, SW., Washington, DC 20460. Place "Docket number F-92-HWEP-FFFFF" on your comments. The Office of Solid Waste (OSW) docket is located in room 2427 at the above address, and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy material from any regulatory docket at a cost of $0.15 per page. Copies of the background documents, Integrated Risk Information System (IRIS) chemical files, and other references (which are not readily available) are available for viewing and copying only in the OSW docket.

Requests for a public hearing should be addressed to Mr. David Bussard, Director, Characterization and Assessment Division, Office of Solid Waste (OS-330), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 260-3000. For technical information contact Mr. William A. Collins, Jr., Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-4791.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are proposed under the authority of sections 1006, 2002(a), 3001, 3002, 3004 and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 84 (HSWA), 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924 and 6926.

II. Background

A. Overview—A National Waste Management System

The Resource Conservation and Recovery Act (RCRA), directs the Environmental Protection Agency (EPA) to develop a national program governing waste management that both promotes the protection of human health and the environment and conserves valuable material and energy resources. This national waste management program involves all levels of government—federal, state and local—all of whom have major roles in the achievement of these national goals. The program potentially encompasses a huge and diverse universe of wastes currently an estimated 13 billion tons per year—including hazardous and nonhazardous industrial wastes, special wastes (*e.g.*, from mining, oil and gas production) and municipal solid waste. These wastes present varying degrees of risk if mismanaged, thereby creating the need for a waste management program able to deal effectively with a variable universe of was, risks, and waste management practices.

For the last decade, however, the federal government has focused the bulk of its efforts on defining and implementing the hazardous waste program under subtitle C of RCRA. These efforts, along with increased liability for cleanup costs under CERCLA and comparable State statutes, have resulted in dramatic changes in how U.S. industries manage hazardous waste. EPA's early regulatory decisions in defining hazardous waste reached broadly to ensure that wastes presenting hazards were quickly brought into the hazardous waste management system. This was accomplished, in part, through the promulgation of the "mixture" and "derived-from" rules (40 CFR 261.3(a)(2)(iv) and 40 CFR 261.3(c)(2)(i), respectively) which define as hazardous certain waste mixtures and materials derived from hazardous waste. The Agency promulgated the "mixture" and "derived-from" rules to close what it believed were potentially major loopholes in the subtitle C management system (see 45 FR 33084, 33095). However, as this definition has been implemented many have recognized that it has resulted in the regulation of certain low hazard wastes as hazardous. Many of these problems became of increasing significance with changes in RCRA, its regulations, and industrial practices since 1980.

In 1984 Congress amended RCRA to ban all hazardous waste land disposal unless and until it had been with the best demonstrated available technology (BDAT). As treatment of hazardous waste began, the volume of residuals derived from treatment grew. These residuals often have low concentrations of hazardous constituents. EPA's analysis indicates that millions of tons of mixtures and derived-from residuals that must be managed as hazardous waste because of their history (*i.e.*, what they were mixed with or derived from) may actually pose quite low hazards.

Additionally, as EPA sought to list those hazardous waste streams which could pose a threat to public health over the past twelve years, important differences have emerged between the concentrations of the same hazardous constituents in different waste streams. This is because EPA bases a listing determination on a variety of factors and not just on concentrations of certain hazardous constituents. Some of these factors (*e.g.*, historic mismanagement practices) are not quantifiable. The overall result in the listing program is that there are no eat concentrations above which a waste is hazardous, and below which it is not. Moreover, because listings identify wastes based on its origin or process, two waste streams containing similar hazardous constituents can have different regulatory status (one being regulated while the other is not) if they have a different origin.

Over time, particularly with increased treatment, the disparity between the potential risks a material poses to human health and the environment and the degree of regulatory control over the material has increased. Consistent with its continuum of control approach, EPA believes that low risk waste should not be subject to full subtitle C regulation. It is EPA's view that the subtitle C program is intended to address situations where there may be substantial present or potential to human health or the environment from

mismanagement of waste (see RCRA section 1004(5)(B)).

Accordingly, the purpose of this rulemaking is to take an initial step toward defining wastes which do not merit regulation under subtitle C, and which can and will be safely managed under other regulatory regimes. The first step in what the Agency refers to as the "RCRA Reform Initiative," is proposing modifications to the RCRA regulatory framework which will address over-regulatory situations created by the "mixture" and "derived-from" rules. The Agency intends to promulgate regulatory modifications no later than April 28, 1993 and requests comment on all the options in today's notice. The Agency is not opposed to implementing further regulatory reforms that are both desirable and technically feasible by April 1993. The Agency requests comment from the regulated community, and all other interested parties, on input and information to assist in this effort.

This rule and other ongoing and future EPA actions will help to define a continuum of control for waste management. EPA favors an approach that tailors waste management requirements to the risk posed by waste. The concept of a continuum of control involves two essential elements. First, it involves tailoring waste management requirements to waste risk under a coordinated, efficient management structure. Waste management covers a large variety of wastes posing diverse risks—some which pose no risk, others which pose significant risks and still others that may pose some risk under certain circumstances. Under a continuum of control, high hazard wastes would require a high level of control, and lower hazard wastes would require corresponding lower levels of control. Second, the continuum also involves defining the appropriate roles for various levels of government in regulating these wastes. For example, RCRA creates an assertive Federal role in setting national standards for the subtitle C hazardous waste system. However, RCRA establishes a more limited Federal role for management of solid wastes where risks are lower.

EPA believes it is time to look at developing a viable continuum of control. The RCRA national waste management program is nearly twelve years old and EPA, the States and the regulated community have gained significant experience in managing wastes. EPA and the States have made significant strides in developing a regulatory framework for hazardous and nonhazardous wastes, particularly in applying treatment technologies and instituting waste reduction practices.

This proposal is one of a number of activities which, as part of the RCRA Reform Initiative the Agency is either considering or has begun, will re-target subtitle C management towards wastes presenting the most significant risks. For example, the Agency is re-addressing the impact of the definition of solid waste on hazardous waste recycling. The goal is to develop a program that encourages recycling while continuing to ensure that such recycling is environmentally sound. Future activities will reduce regulatory barriers to hazardous waste recycling and tailor the requirements to fit the actual risk posed.

In this notice, EPA is proposing to define the conditions under which certain hazardous wastes no longer present a substantial threat to human health and the environment and therefore do not merit regulation under subtitle C of RCRA. EPA is considering several conceptual approaches to address this issue. The first approach is to eventually set consistent concentration-based levels for exiting subtitle C management across all listed waste streams and all hazardous constituents. Under this approach, the current waste identification system of listings, characteristics, and the mixture and derived-from rules would continue to define "entry" to the subtitle C program; this approach would define new "exit" criteria for wastes and media to leave subtitle C control and to be managed under subtitle D of RCRA and State and local waste management requirements. There are several options to determine these concentration-based levels. One option is to set a single exemption multiple above risk-based concentration levels (*i.e.*, the exemption concentration for each hazardous constituent is either equal to or a fixed multiple above a health-based concentration for that constituent). A second option is to vary the multiple for each hazardous constituent to reflect the different chemical properties of the constituent. A third option is to set technology-based concentration levels (*i.e.*, the exemption concentration for each hazardous constituent is based on the Land Disposal Restriction requirements at CFR part 268).

The second approach is to set consistent characteristic levels for both entering and exiting subtitle C management across all waste streams. For example, the hazardous waste toxicity characteristics is the approach EPA uses under RCRA to identify testable parameters, such that any solid waste which has a concentration above the toxicity characteristics level must be managed under subtitle C until it has a concentration below the toxicity characteristics level—the "entrance" is the same concentration as the "exit." There are several options in today's notice that uses this approach to replace the mixture and derived-from rules. One method is to expand the hazardous constituents regulated under the current characteristics.

In addition to these two structural approaches, the Agency is also considering the use of management standards in conjunction with these alternatives as a way of providing a continuum of management. Under this approach, wastes within certain concentration ranges would be contingently exempt from subtitle C regulation if certain waste management practices are followed. For example, if these wastes are disposed in a lined landfill or in areas of low precipitation, then they could be exempted from subtitle C regulation. Section III discusses in greater detail the way in which management standards could be combined with each of the structural approaches to provide a more effective continuum of management for these wastes. All of these approaches will be discussed in more detail in the section III of this proposal. All are in line with the Agency's continuum of control concept. Each has advantages and disadvantages.

In the near term, the Agency recognizes the necessity of addressing, in a timely manner, comments received on the reinstatement by EPA of the mixture and derived-from rules remanded on procedural grounds in *Shell Oil Company* v. *U.S. Environmental Protection Agency*, 950 F.2d 751 (D.C. Cir. 1991). EPA seeks comment specifically on how well the exemption approaches presented in today's notice minimizes or eliminates the extent to which the existing mixture and derived-from rules may operate to regulate wastes which do not need to be managed under subtitle C.

The contingent management approach is an approach that, by definition, is tailored to provide different, less stringent exemption criteria for a waste if it is managed in a particular way. Under this approach, the level of control can directly tied to the risk posed by the waste. However, in the past, the Agency has found significant implementation obstacles to contingent management (see 55 FR 11807; March 29, 1990). As a result, the Agency is actively engaged in identifying alternative ways to refine the nation's hazardous waste management

system and seeks comment on all the approaches included in this notice.

It is the Agency's intention to move toward the implementation of a continuum of control. Today's notice represents a step in that direction. EPA requests comment on all aspects of this proposal.

B. The Current Hazardous Wastes Identification Program

1. Characteristics and Listings

Section 1004(5) of RCRA defined "hazardous waste," in part, as a "solid waste" which may "pose a substantial present or potential hazard to human health and the environment when improperly treated, stored, transported, or disposed of, or otherwise managed." Pursuant to subtitle C, the Agency was required to develop and promulgate criteria for identifying : characteristics of hazardous waste and to list particular wastes as hazardous.

Currently, the Agency designates wastes as hazardous in one of two ways. One way is to identify properties or "characteristics" which, if exhibited by a waste, indicate a potential hazard if the waste is improperly managed. To date, the Agency has identified four types of characteristics: ignitability, corrosivity, reactivity, and toxicity (see 55 FR 11798, March 29, 1990, for the expanded toxicity characteristics). Each person generating a solid waste is responsible for determining whether such solid waste exhibits any of these characteristics. Any solid waste that exhibits any of the characteristics remains hazardous until it no longer exhibits the characteristics.

The other way the Agency designates wastes as hazardous is by "listing." The Agency has studied wastes generated by many industrial activities and has determined that these wastes should be defined as hazardous waste (listed) for various reasons, such as they contain significant levels of toxic and or carcinogenic constituents, manifest one or more of the hazardous waste characteristics, or have the potential to exert specific detrimental effects on the environment. As discussed in the preambles and in associated dockets accompanying the listings, EPA determined that the listed wastes typically and frequently contain hazardous constituents at levels that "pose a substantial present or potential threat to human health or the environment if the wastes are improperly treated, stored, transported, disposed of, or otherwise managed." The wastes thus meet the definition of "hazardous waste" under section 1004(5) of RCRA. In general, under EPA's regulations, the Agency has interpreted "posing a substantial threat" to mean that these wastes contain toxic constituents at levels many times greater than acceptable for human exposure and that these toxicants are sufficiently mobile and persistent to reach environmental or human receptors.

On May 19, 1980, as part of the final and interim final regulations implementing section 3001 of RCRA, EPA published two lists of hazardous wastes: One composed of wastes generated from non-specific sources (*e.g.*, spent solvents) and one composed of wastes generated from specific sources (*e.g.*, distillation bottoms from the production of benzyl chloride). The Agency also published two lists of commercial chemical products that are hazardous wastes when discarded, intended for discard, or spilled. These four lists have been amended several times, and are currently published in 40 CFR 261.31, 261.32, 261.33(e) and (f), respectively.

2. Origins of the "Mixture", "Derived-from" and "Contained-In" Rules

On December 18, 1978 (43 FR 58946), EPA published a proposed rule that outlined the Agency's intended approach to regulating hazardous waste management, including a definition of hazardous waste. Under this proposal, a solid waste would have been defined as a hazardous waste if it specified characteristics, or if it was specifically listed by EPA as a hazardous waste. Furthermore, if a particular listed hazardous waste stream did not exhibit any of the characteristics, generators could show it to be nonhazardous and thus exempt from regulation as a hazardous waste. In the proposed rule, the Agency introduced eight possible characteristics of hazardous waste, of which four have been adopted (ignitability, corrosivity, reactivity, and toxicity). The proposed rule also included a proposal to list a number of hazardous waste streams.

On May 19, 1980 (45 FR 33066), the Agency published final rules governing the management of hazardous waste. Under the final rules, the definition of hazardous waste included characteristic hazardous wastes, listed hazardous wastes, and mixtures of solid wastes and one or more listed hazardous wastes. Wastes are characteristically hazardous if they exhibit any of the four characteristics, if they meet certain toxicity criteria or if they contain certain toxic constituents (see 40 CFR 261.10–24).

The provision governing mixtures of solid waste and listed hazardous waste is known as the "mixture" rule (currently 40 CFR 261.3(a)(2)(iv)). As promulgated in May 1980, it required that a mixture be managed as hazardous unless it has been delisted. "Delisting" is a procedure whereby a person may file a petition with EPA to remove a specific waste from the hazardous waste listing by demonstrating that the waste in question does not pose a hazard (see 40 CFR 260.22).

In addition, the May 19, 1980, final rules included the "derived-from" rule (currently 40 CFR 261.3 (c)(2)(i) and (d)(2)). It states that any solid waste generated from the treatment, storage, or disposal of a listed hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate, remains a hazardous waste unless or until delisted.

Further, 40 CFR 261.3(c)(2)(i) specifies that any waste (such as rags, clothing, absorbants) that contains a listed waste must be managed as if it were hazardous waste ("contained-in" rule).

The Agency has interpreted the "contained-in rule" to apply to media that are not solid wastes, but contain a listed waste (such as contaminated soil and groundwater).[1] That is, media that are contaminated with hazardous waste must be managed as if they were hazardous wastes until they no longer contain the listed waste, exhibit a characteristic as defined at 40 CFR 261.3(a)(2)(i), or are delisted. The Agency has not issued any specific rules as to when, or at what levels, environmental media contaminated with hazardous wastes are no longer considered to "contain" those hazardous wastes.

The three rules described above ("derived-from", "mixture", and "contained-in") apply regardless of the concentrations and mobilities of hazardous constituents in the "derived from" or "mixture" waste, or in the material or media containing the listed waste.

3. Status of "Mixture" and "Derived-from" Rules

Numerous petitions for judicial review were brought to challenge the May 19, 1980, final rules. One of the challenges alleged that the definition of hazardous waste proposed on December 18, 1978, did not adequately discuss the "mixture" and "derived-from" rules promulgated in the final regulations. The petitioners thus argued that they were

[1] EPA's application of the "contained in rule" to contaminated media was upheld by the D.C. Circuit Court of Appeals in *Chemical Waste Management, Inc.* v. *U.S. EPA*, 869 F.2d 1526 (D.C. Cir. 1989).

deprived of adequate notice and opportunity to comment as required by the Administrative Procedures Act (APA, 5 U.S.C. 553(b)). Most other issues raised by the petitioners were resolved by settlement, by subsequent statutory or regulatory revisions, or by the failure of petitioners to pursue them. However, the question of whether the Agency gave adequate notice of the "mixture" and "derived-from" rules was not resolved.

On December 6, 1991, the court agreed with the petitioners that the 1978 proposal did not adequately provide notice of either rule and that the petitioners thus did not have sufficient opportunity to comment (*Shell Oil Co.* v. *EPA*, 950 F.2d 751 (D.C. Cir. 1991)). The court vacated the rules and remanded them to the Agency because of procedural defects but did not reach any of the substantive issues raised by the petitioners. However, the court also recognized the problems with vacating long-standing rules that are essential to the hazardous waste management program, and suggested that the Agency could reinstate the rules "in whole or in part" on an interim final basis under the "good cause" exemption of the APA. The Agency, concerned about the dangers that may be posed by a discontinuity in the regulation of hazardous waste, reinstated the rules on an interim basis under section 553(b)(3)(B) of the APA (57 FR 7628; March 3, 1992).

In the May 19, 1980, preamble to the "mixture" and "derived-from" rules, EPA recognized that designating all waste mixtures and derived-from wastes containing listed wastes as hazardous wastes may lead to some wastes unnecessarily being managed under subtitle C (45 FR 33095). Given the information available on industrial wastes in 1980, and the waste management practices in effect at that time, the Agency was concerned with generators evading subtitle C requirements by simply commingling listed wastes with nonhazardous solid waste. The Agency believed that the delisting program would provide individual facilities relief by excluding a waste mixture and derived-from waste if the facility could show that the waste is not hazardous.

With nearly twelve years of experience implementing 40 CFR part 261, regulators are in a much better position to make judgments about the degree of risk presented by certain wastes. The Agency recognizes that the "mixture" and "derived-from" rules have resulted in unnecessarily stringent requirements for certain low risk wastes. The reinstatement gives EPA the time needed to sort through the implications of alternative regulatory approaches without jeopardizing human health and the environment. Comments received on both the reinstatement notice and a notice of proposed rulemaking soliciting comment on other approaches to regulating waste mixture and residues (57 FR 7636; March 3, 1992) will be made part of the record of this final rule and will be considered in combination with comments received on today's proposed action.

Because EPA anticipates that it may take up to one year to finalize any alternative regulatory approaches, the Agency added a termination date of April 28, 1993 to the reinstated rules. The unmodified "mixture" and "derived-from" rules will expire on April 28, 1993, unless EPA, after considering comments, acts to change this provision.

C. Relationship of Today's Proposed Action to Current Hazardous Waste Identification Program

Currently, listed wastes (including wastes derived from or mixed with listed waste) remain hazardous unless they are delisted according to general procedures set forth in 40 CFR 260.20 and specific delisting procedures set forth in 40 CFR 260.22. Today's proposal presents a number of options under consideration by the Agency where regulation of listed hazardous waste under the jurisdiction of RCRA subtitle C would cease without the need for a delisting petition. Today's proposal addresses wastes, contaminated media, and other materials (*e.g.*, contaminated rags, absorbants) that, under current rules, continue to be designated as "hazardous wastes" despite treatment and detoxification that reduces constituents concentrations to levels of minimum risks. With respect to the existing subtitle C continuum of control, promulgation of one of these options would represent the line of demarcation below which wastes would no longer require subtitle C control.

Today's proposal provides the opportunity for self-implementing exemption through demonstration that wastes or contaminated media contain relatively low levels of hazardous constituents. While facilities generating such wastes can petition for delisting by rulemaking, today's proposal would not be as resource intensive to the Agency nor as time-consuming to the regulated community. In addition, the Agency hopes to create incentives for effective and innovative treatment and reduce unnecessary demand for subtitle C disposal capacity.

In today's action, the Agency proposes to remove the termination provision (*i.e.*, 40 CFR 261.3(e)-Sunset Provision) from the "mixture" and "derived-from" rules. Upon final promulgation of one of the options noticed in today's action, the "mixture" and "derived-from" rules will remain, but their scope will be limited. For the set of options under the first conceptual approach, the exemption levels would supplement the current de-listing process rules providing an easier way to exempt a particular waste. For the set of options under the second conceptual approach, the mixture and derived-from rules would not apply to any waste which would otherwise be covered under the characteristics approach. These solid wastes would be managed as hazardous as long as they exhibit a characteristic.

D. Chemical Manufacturers Association Rulemaking Petition

The Agency has received a rulemaking petition from the Chemical Manufacturers Association (CMA) to establish concentration-based exemption criteria for the mixture rule, derived-from rule, and contaminated media rule/interpretation." CMA submitted this petition because it believes that the mixture rule, derived-from rule, and contaminated media rule/interpretation are over-inclusive in that they require hazardous waste management of mixtures, residues and contaminated media that contain "innocuous" levels of hazardous constituents. Because CMA's petition is included as one of the options presented in today's proposal (*i.e.*, Option 1), the Agency believes that today's notice serves as a tentative response to this petition, in accordance with 40 CFR 260.20(c).

E. Legal Authority for Defining Hazardous Waste Based on Actual Management Practices

As noted above, section 1004(5) of RCRA defines "hazardous waste" to include solid waste which, because of its quantity, concentration, or characteristics "may * * * pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed." Section 3001 required EPA to establish criteria for listing or otherwise identifying hazardous waste "which should be subject to" subtitle C hazardous waste management requirements, taking into account a variety of hazardous properties, such as toxicity, persistence, and degradability. EPA has established the criteria for listing hazardous waste in 40 CFR 261.11

and for identifying hazardous waste characteristics in 40 CFR 261.10.

Since 1980, EPA has implemented the section 1004(5) definition by considering the plausible types of mismanagement that a waste could be subject to and determining the hazards presented by the waste under that scenario. See 45 FR 33113 (May 19,1980); 55 FR 11800 (March 29, 1990). Thus, in analyzing whether a waste should be identified as "hazardous" EPA has not generally determined whether that waste is in fact mismanaged under the scenario, but only whether it could be. Thus, EPA's hazardous waste definitions capture wastes which could be hazardous if mismanaged, not wastes which are necessarily hazardous under all circumstances.

As explained in more detail below, however, EPA does not believe that the statute requires that the hazardous waste designation always assume mismanagement of the waste in question. Moreover, because the Agency has acquired 12 years of experience in implementing the hazardous waste program and a more detailed knowledge concerning actual waste management practices, the Agency believes that it is appropriate to begin tailoring the scope of its hazardous waste program to reflect how wastes are actually managed, rather than how they might be managed under a worst-case analysis. Today's rule reflects this more tailored approach.

This approach is authorized by the definition of "hazardous waste" in RCRA section 1004(5). Section 1004(5)(B) defines as "hazardous" wastes which may present a hazard "when mismanaged," thus authorizing EPA to determine whether, and under what conditions, a waste may present a hazard and regulating the waste only under such conditions, *i.e.*, when mismanaged. (Note that this in contrast to section 1004(5)(A) under which EPA regulates as hazardous wastes which are inherently hazardous no matter how managed.)

In addition, EPA believes that section 3001 provides EPA with the flexibility to consider the necessity for, and appropriateness of, hazardous waste regulation for wastes which meet the section 1004(5) criteria. Section 3001 specifies that EPA must make a determination of whether such wastes "should" be subject to the provisions of subtitle C in determining whether to list or otherwise identify wastes as hazardous under that section. Thus, section 3001 authorizes EPA to determine whether subtitle C regulation is appropriate in determining whether to designate a waste as "hazardous." EPA thus may determine that subtitle C regulation is not appropriate because such wastes are not "hazardous" when properly managed and, based on information available to the Agency, unlikely to be mismanaged. Regulation of such wastes under subtitle C would not be "necessary to protect human health or the environment" (see RCRA sections 1003(a)(4), 3002(a), 3003(a), 3004(a)).

Moreover, EPA interprets its existing regulatory criteria for listing hazardous waste as providing the flexibility to consider actual management of the waste in order to determine whether to designate such waste as "hazardous." EPA's listing criteria at 40 CFR 261.11 include such factors as the plausible types of improper management to which the waste could be subjected and actions taken by other programs to address the hazards posed by the waste and any other appropriate factors. Where mismanagement of the waste is likely to be implausible or has been adequately addressed by other programs, EPA need not list the waste as hazardous under the regulatory criteria. Similarly, EPA's criteria for identifying hazardous waste characteristics codifies the statutory definition of hazardous waste and thus provides EPA with the same flexibility accorded by the statute to consider actual management practices in determining whether a waste is hazardous.

III. Options for Establishing Hazardous Waste Identification Criteria

A. Overview of Approaches

The purpose of today's proposal is to establish criteria where the regulation of listed hazardous waste under the jurisdiction of RCRA subtitle C, the federal hazardous waste management system, ceases. The first approach presented proposes consistent and generic risk-based exemption levels for exiting subtitle C management. These exempting criteria can be based on risk, technological performance, or a combination of both. The second approach proposes consistent and generic exemption levels for both entering and exiting subtitle C management using hazardous waste characteristics. To implement this approach, new characteristics could be added or the scope of the existing characteristics expanded, or both. Additionally, a contingent management system based on the concept that disposal can modify the actual risk posed by a waste, could augment either approach and is proposed as well. Lastly, three alternatives are proposed for establishing exemption levels for media contaminated with listed hazardous waste. The Agency is proposing and setting forth these approaches for comment today.

The first approach involves setting a single risk-based number for toxicants in the listed waste. To exit subtitle C regulations as a listed hazardous waste, the waste (and waste mixed with, derived from, or containing listed wastes) [2] toxicants must be in concentrations less than or equal to the numeric exemption criteria. These concentration-based exemption criteria (CBEC) could be determined by estimates of residual risk, by the performance of treatment technologies, or by some combination of both.

The second approach relies on the current characteristics approach, modified by expanding the number of toxic constituents listed in Toxicity Characteristics (TC). Since hazardous waste characteristics determine both entry and exit from the hazardous waste management system, any waste, waste mixture, treatment residual, contained-in waste, or contaminated media could exit subtitle C control if the generator determines that a representative sample of the waste no longer exhibits any of the four types of characteristics: ignitability, corrosivity, reactivity, and toxicity. Today's notice presents an option under this approach—the Enhanced Characteristics Option (ECHO)—in which the Toxicity Characteristics is expanded. Since ECHO would expand the scope of a characteristic, this approach is the only one presented today which could bring some new solid waste streams into subtitle C, while deregulating substantial volumes of wastes currently managed under subtitle C.

These two approaches could be implemented in combination with a "contingent management" approach under which a waste would be exempted from subtitle C contingent upon compliance with certain waste management practices. For example, under the first approach wastes with concentrations higher than the CBEC levels could be conditionally exempt from subtitle C if the waste is managed in certain controlled environments. Under the second approach, wastes which are characteristically hazardous under ECHO could be found conditionally not characteristic if

[2] This approach would be an alternative means for exiting subtitle C and would not replace the generators right to petition the Agency to exempt a specific listed hazardous waste (i.e., delist) from regulation under RCRA subtitle C.

managed under certain conditions. This approach could entail simple management requirements or could be very detailed and address a variety of specific management practices. Later sections of this preamble present different contingent management options.

There are two issues that impact both the CBEC and ECHO approaches. First, an important factor in determining the impact of today's proposal is the relationship between the concentration-based exemption criteria and ECHO levels proposed today and the RCRA land disposal restriction standards.

Section 3004(m) of RCRA requires that hazardous wastes be treated to a level at which "short-term and long-term threats to human health or the environment are minimized" prior to land disposal. In the "Third Third" land disposal restriction rulemaking, 55 FR 22520 (June 1, 1990), the Agency explained in detail its interpretation that the statute leaves to EPA the determination of whether the LDR treatment standards attach at the point of waste generation or at the point of disposal. *Id.* at 22651–22563.

In the Third Third rule, EPA explained why the Agency believed that the point of generation approach would generally better meet the goals and purposes of the LDR program than a point of disposal approach. *Id.* at 22652. However, EPA also explained that the point of disposal approach is appropriate in certain circumstances, such as when applying LDRs at the point of generation would seriously disrupt the implementation of other environmental regulatory programs. *Id.* at 22653. One of the policy rationales for exercising its discretion under the statute to generally require full BDAT treatment for wastes that are hazardous at the point of generation was the inadequacy of existing hazardous waste identification programs; specifically wastes identified as hazardous for a particular characteristic might still be toxic, due to the presence of non-TC constituents, even when that characteristic is removed. See *Id.* at 22652. Such waste thus would not meet the section 3004(m) "minimize threat" land disposal standard even after it is no longer "hazardous".

The decision concerning which LDR approach to utilize with respect to the low hazard waste subject to today's proposal may significantly affect the practical impact of the options proposed today. For example, a waste which is hazardous when generated but treated to CBEC or ECHO levels may still, under a point of generation approach, require treatment to any more stringent LDR level prior to land disposal. Thus, many CBEC or ECHO wastes may require LDR treatment prior to disposal in a subtitle D unit.

However, to the extent that the CBEC or ECHO proposal here provide a more comprehensive way of determining the hazards presented by hazardous wastes, requiring treatment beyond the levels at which a waste is hazardous may no longer be necessary to "minimize threats." For that reason, EPA is taking comment on some aspects of adopting the point of disposal as the point at which LDR standards attach as one alternative way of addressing the interaction between the CBEC and ECHO approaches proposed today and the RCRA land disposal restrictions. For example, the Agency is considering this alternative in addressing the problems raised by the cleanup of contaminated media (see further discussion in section III. E.) In addition, under the ECHO approach, EPA is requesting comment on this alternative for addressing the issues raised by the land disposal restrictions' relationship to characteristic wastes. EPA requests comment on this issue.

Section 3004(m) of RCRA provides that treatment standards for hazardous waste prior to land disposal cannot be below levels at which "short-term and long-term threats to human health and the environment are minimized." See also *HWTC* v. *EPA (HWTC III)*, 886 F.2d 355, 362 (D.C. Cir. 1989), *cert. denied* 111 S.Ct. 139 (1990). To date, the Agency has been unable to define risk-based levels which meet the section 3004(m) standard. See 55 FR 6640 (February 26, 1990). EPA expects to address the issue of the relationship between the BDAT standards and the section 3004(m) "minimize threat" standard in more detail in the upcoming LDR "phase two" proposal, to be published this summer. However, EPA also recognizes that the levels proposed in this rule can be related to the "minimize threat" standard; therefore, as a second way of addressing this issue, the Agency is proposing that any exemption criteria promulgated will become minimized threat levels for the LDR program. If the CBEC or ECHO levels are also the "minimize threat" standard, then wastes that are treated to levels below the exemption level would also have met their obligation under the LDR program and could accordingly be land disposed without further treatment. The Agency asks for comment on whether the levels proposed in this rule should be the "minimize threat" level that bounds the LDR treatment standards.

The second issue concerns State programs. To the extent any of the options are a narrowing in scope of the, or establishing a less stringent, federal program, these new exemptions will have little practical impact unless and until adopted by States. As a result, it is very important to the Agency that we receive State input on the options presented here. EPA intends to work closely with its counterparts in State governments to develop and implement HWIR options.

The following options discussed in today's proposal are presented for comment. The Agency specifically requests comment on all aspects of these options, including the exposure scenarios on which the levels were developed as well as the levels themselves.

B. Concentration-Based Exemption Criteria (CBEC) Approach

As stated above, the first approach involves establishing a single set of numeric criteria where RCRA subtitle C jurisdiction ends for listed wastes. Under this set of options, numeric levels for wastes can be set generically for all constituents found in waste streams. When a waste contains constituents at concentrations at or below these levels, management requirements are left to the subtitle D program and the States. The levels could be a risk-based number, a technology-based number, or a combination of the two. Wastes that contain toxicants at concentrations below the exemption levels would not be regulated under subtitle C.

Under this approach, the Agency is proposing to establish generic exemption levels for hazardous constituents found in listed hazardous wastes using a risk-based approach. These exemption levels represent baseline levels (*i.e.*, levels that the Agency believes are not hazardous, and therefore, should not be regulated under the subtitle C program). These numbers, for the first three options, would apply generically to all wastes regardless of their ultimate disposal manner or their origin. Although there are many ways to define the point where the risk presented by wastes is below the hazardous level that determines subtitle C jurisdiction, today's notice offers three options. The Agency has evaluated the risk for all options in terms of the hazard posed to humans due to groundwater contaminated by toxic constituents leaching from a waste, with the groundwater used as source of drinking water by an individual over a period of time. The proposed risk-based exemption levels are based on Maximum Contaminant Levels (MCLs) proposed or promulgated under the Safe

Drinking Water Act. Otherwise, Risk Specific Doses (RSDs) and Reference Doses (RfDs) are utilized for carcinogens and systemic toxicants, respectively. Listed waste which leaches toxicants at concentrations lower than the exemption levels would no longer be regulated as hazardous. Toxicant leach levels in waste are determined using the Toxicity Characteristics Leaching Procedure (TCLP) The TCLP is discussed in section VI of today's notice. Appendix 1 lists the health-based number for each of toxicant in alphabetical order. Alternative exemption levels derived from the same health-based numbers are included in this table as well.

An alternative exposure scenario which could be evaluated is direct human exposure to the waste through incidental ingestion. The Agency requests comment on the appropriateness of the contaminated groundwater exposure scenario and alternative scenarios. Exposure assumptions, scenarios, and simulation techniques are fully discussed in section VI of this document.

The Agency will rely on scientific evidence used in past rulemakings (*i.e.*, the TC rule) [3] and the information presented in section VI of today's proposal to evaluate the CBEC levels. However, the Agency today requests comment on two different approaches to setting those levels: a single multiplier (100, 10, 1, etc.) for all constituents or an individual multiplier for each constituent.

Under the first of these alternatives, EPA would assign a single multiplier for each constituent. A multiplier of 100 was used for the constituents in the 1980 Extraction Procedure (EP), for example. As discussed in section VI, this multiple incorporates the expected physical dilution and attenuation of a constituent. This approach assumes that the same value adequately represents the dilution and attenuation characteristics of all the constituents in different chemical classes—metals, aromatics, phenols, and others. A single multiplier may reduce the administrative burden and complexity for the Agency and the regulated community.

EPA prefers the use of a single multiplier for all constituents because it could easily be implemented within the timeframe EPA has set for promulgating interim improvements to the mixture and derived-from rules. The Agency requests comments on this alternative and the appropriate level of the multiplier.

Under the second alternative, EPA would determine constituent-specific multipliers for all constituents. For example, EPA could determine separate multipliers for each constituent (*i.e.*, the multiplier for silver could be 10, while the multiplier for phenol could be 10,000, and so on for each appendix VIII constituent). Recently, EPA has been developing constituent-specific multipliers (see 55 FR 11798; March 29, 1990). While a major expansion of this effort could pose significant challenges to the Agency's resources in the short-run, it would also allow EPA to incorporate available information on contaminant fate and transport in the environment. It would also better tailor the regulation of a constituent to the potential threat that a chemical poses to human health and the environment through different routes of exposure. The Agency requests comments on this alternative.

EPA believes there are at least three choices for developing levels for CBEC. One is to determine levels the Agency is very confident do not pose a risk, such as using a multiplier of 1 to develop regulatory levels from MCLs. EPA believes that a multiplier of 10 might also be justified under this approach; it is derived from using the EPACML model and the assumptions described in more detail in section VI, using the 95th percentile on the curve. This percentile is higher (more protective) than the level used in deriving TC levels. The multiplier of 100 represents another approach which is to develop a level that EPA concludes is the demarcation of where the Federal interest in regulating wastes ends. Under this approach, the multiplier of 100 is based on using the 85th percentile as was done to develop TC levels.

Option 1: Health-based Numbers (HBN)×100

The first option would establish the generic exemption levels one hundred times the health-based number. That is, listed waste which leaches toxicants at levels one hundred times or less the corresponding health-based number would no longer be regulated as listed hazardous wastes. This option was suggested to the Agency by the Chemical Manufactures Association (CMA) in a petition for rulemaking in 1989. This option is also the same approach that was used to establish TC levels. At that time, EPA considered these to be levels which identify wastes that are "clearly hazardous".

EPA is considering CBEC at 100 times health-based numbers for a number of reasons. First, such an approach would harmonize the listings and characteristics programs by using the same number used for the TC. EPA has received numerous requests for a straight forward approach to identifying hazardous wastes. Choosing a multiplier of 100 would unify both the TC and the exit level for listed waste thereby simplifying hazardous waste identification while allowing for a concentration-based exemption. (If future modifications to the TC involve changing the multipliers, EPA currently expects that the Agency would consider making parallel changes to the CBEC levels.)

A multiplier of 100 corresponds to a cumulative frequency close to the 85th percentile from the EPACML simulations used to support the TC rule. In other words, in this exposure scenario, an estimated 15 percent of the drinking water wells closest to unlined municipal landfills could have contaminated concentrations above MCLs, if the landfill within a mile of the well receives wastes at or just below the possible exemption levels of 100 times the health-based numbers. As the distance between a landfill and a well increases, the probability of exceeding MCLs decreases. It is important to note that the information on landfills used for this analysis is at least six years old, and conditions such as size, proximity to drinking water wells, management practices, disposal practices, etc, may have changed.

Option 2: HBN×10

Another option for establishing numeric exemption criteria would be setting criteria at ten times the health-based numbers. That is, listed waste which leaches toxicants at levels ten times or less the corresponding health-based number would no longer be considered hazardous. Therefore, this option is slightly more protective than the delisting program which exempts specific listed hazardous waste from subtitle C regulation using somewhat more conservative multipliers depending on volume (see delisting discussion, section XIII). A multiplier of 10 corresponds to approximately the 95th percentile levels generated from EPACML simulations used to support the TC. This means that an estimated 5 percent of the wells closest to unlined municipal landfills will experience concentrations of leachate above health-based numbers, as surveyed in 1986 (EPA Solid Waste (subtitle D) Landfill Survey, 1986). At a multiplier of 10, EPA

[3] The Toxicity Characteristics (TC) rule (see 55 FR 11826, March 39, 1990) currently list 39 different constituents and whose health-based number are multiplied by 100. EPA deferred additional organic constituents until better health data and models became available.

believes it is possible, but unlikely, that any individual will be continuously exposed at concentration above health-based levels of concern for any pollutant.

Preliminary analysis preformed by the Agency indicate that a few treatment residuals and very dilute waste mixtures, such as waste waters, may be exempted from subtitle C control under this option. This option may have little practical impact on other low waste mixtures and treatment residuals. See appendix 1 in appendix X where these exemption levels are listed.

Option 3: HBN With a Multiplier of 1

Yet another option establishes numeric exemption criteria for toxicants in wastes at concentrations equal to the toxicants' health-based number. Health-based numbers are concentrations below which toxicants are considered by EPA to present an acceptable risk to human health. This option is the most protective option presented for comment today. These levels are considered protective even under worst case exposure scenarios. Preliminary analysis preformed by the Agency indicates that because the risk presented by wastes that meet this exemption criteria are *de minimis*, very few treatment residuals and only extremely dilute waste mixtures may be exempted from subtitle C control under this option. Therefore, this option will have little practical impact on low hazard waste mixtures and treatment residuals.

Option 4: BDAT

Under this option, the Agency is proposing that listed hazardous waste which has been treated to the applicable treatment standard would also be exempt from subtitle C management. Technology-based generic exemption levels could be developed by establishing numbers based on toxicant concentration levels found in waste residuals which have been treated using proven treatment technologies. This approach, which is consistent with the LDR program, would require that all listed hazardous wastes meet treatment levels prior to disposal. The Land Disposal Restrictions (LDR) Program establishes treatment standards for hazardous wastes. Persons managing those wastes must demonstrate that their wastes meet these standards before the wastes can be land disposed. The standards are promulgated in subpart D of 40 CFR part 268. While some of these standards require that certain wastes be treated by specific treatment technologies before land disposal, the majority of the treatment standards are numerical standards for subsets of toxicants commonly found in individual listed wastes. These standards were developed by evaluating the effectiveness of the best demonstrated available treatment (BDAT) technologies for individual listed wastes. If the numerical BDAT technology standards for individual waste streams were used as exit criteria for listed hazardous waste, residuals which were treated in accordance to BDAT would no longer have to be managed in a subtitle C facility when disposed. The BDAT standards, as currently promulgated, are solely technology-based and do not consider risk. As a result, the treatment standards are in some cases higher and in other cases lower than risk-based levels discussed above. Setting exemption criteria equal to LDR treatment standards implies that the treatment standards render the risks presented by wastes to acceptable levels given the use of best demonstrated available technology.

The Agency believes BDAT levels per se are inappropriate as exemption criteria, because these levels are purely technology-based and do not consider risk. However, the use of these levels as CBEC has been suggested to the Agency because in many cases treatment to these levels can substantially reduce the risk presented by the waste, these levels are widely implemented throughout the hazardous waste program, and often these levels result in wastes that are below or close to the risk-based levels of some of the options discussed above. The use of BDAT levels as exit criteria gives more confidence to some interested parties who prefer to rely on the performance of technology, rather than the performance of risk assessment. Therefore, the Agency requests comment on the appropriateness of considering these levels as CBEC.

Option 5: BDAT Capped With HBN

Another option the Agency is proposing for comment today is to establish generic exemption levels through a combination of the technology and risk options discussed above. These options could be merged in different ways to modify an approach based on BDAT levels. The first, is to recognize that there may be some wastes for which there is some significant residual risk even after achieving technology-based treatment levels. There may be some wastes for which best demonstrated and available treatment technology cannot routinely get below the figure of 100 times health-based levels, for example. Under this option, for those wastes, a risk-based leach level such as 100 times health-based numbers would be the CBEC level rather than the BDAT standard.

Finally, EPA notes that the concept of merging BDAT and risk-based approaches is complex because BDAT standards are sometimes set as total concentrations in the waste, levels measured in a leach test, or mandated. The Agency solicits comment on the problems that result from that complexity as well as on this approach generally.

As stated in Option 4, some parties prefer BDAT treatment levels because in many cases treatment to these levels substantially reduces the risk presented by the waste and these levels are widely implemented throughout the hazardous waste program. Including either a risk-based modification to these treatment levels retains the advantages of Option 4, while removing some of the disadvantages. The Agency requests comment on the appropriateness of considering these levels as exemption criteria.

C. Expanded Characteristics Option (ECHO)

The second conceptual approach is based on the current hazardous characteristics approach for identifying hazardous wastes subject to subtitle C. This approach would establish the same characteristic (concentration) threshold for determining whether a waste stream would be covered as a subtitle C waste (*i.e.*, "entry" to the subtitle C waste system) and when a waste stream would be exempt from subtitle C regulation. Therefore, RCRA characteristics—ignitability, reactivity, corrosivity, and toxicity—would determine both entry to and exit from the hazardous waste management system; this would assure a consistent regulation of wastes. This rationalization of entry and exit constituent levels would dramatically simplify waste identification under the RCRA regulatory system.

There are three important advantages to such an approach. First, the characteristic approach would largely replace the current approach based on the combination of waste listings and the "mixture" and "derived-from" rules. As noted above, this system has required the management of millions of tones of low risk wastes within the subtitle C hazardous waste management system. The characteristic approach would tailor waste management requirements to levels the Agency believes minimizes the short- and long-

term threats to the protection of human health and the environment.

Second, the characteristic approach would also provide important programmatic advantages over the concentration-based approaches outlined above. Currently the Agency must devote significant resources to investigate and list each hazardous waste stream. At the current pace, listing all potentially hazardous waste streams could take several decades. By developing a set of comprehensive hazardous waste characteristics, the Agency could reallocate its resources away from waste stream identification and focus instead on ensuring that generators properly carry out the tests to determine whether their solid waste exhibits a characteristic.

In addition, this approach will give generators and waste handlers substantial incentives to develop new information about the characteristics of their waste streams. Under the concentration-based approach, generators, etc. have little incentive to develop such information and, as a consequence, EPA must devote substantial resources to develop information on the transport and fate of waste constituents in the environment.

Third, the characteristic approach would achieve a much larger portion of the potential cost savings associated with addressing the overly broad regulation of wastes under the current "mixture" and "derived-from" rules.

Therefore, the Agency is proposing the Enhanced Characteristic Option (ECHO) below as a way to move to a system of characteristics. The Agency requests comment on all aspects of this issue.

Option 6. ECHO

EPA has developed four "characteristic" tests for identifying hazardous waste—the Corrositivity, Ignitability, Reactivity, and Toxicity characteristics. This approach would rely on this set of characteristics, augmented by a substantial revision of its toxicity characteristic test to address the chronic and carcinogenic effects of as many additional appendix VIII constituents as possible. The current Toxicity Characteristic (TC) was devised to address the potential adverse health-based effects of 39 heavy metal and hazardous organic constituents when improperly placed in an unlined landfill.

Under this option, the Agency would expand the Toxicity Characteristic from its current list of 39 (40 CFR part 261) appendix VIII hazardous constituents to as many appendix VIII constituents as possible. The TC then would address all of the chronic and carcinogenic effects of the appendix VIII constituents for which there is a peer-reviewed health based concentration level and an analytic method for detecting the constituent.

During the TC rulemaking, the Agency received many comments from the environmental community suggesting that the Agency expand the TC to consider other toxicants in addition to the 39 incorporated in the final rule. The ECHO would respond to those concerns.

As in the current TC rule, the characteristic level for these new constituents would be a multiple of the health based limit (HBLs). The multiple would be derived from the EPA Composite Model for Landfills (EPACML) to reflect the diffusion and attenuation of the constituent during ground water transport.

In addition to determining the scope of the expanded toxicity characteristic, the Agency must determine the characteristic level for each constituent. As discussed in Option 1 above, there are two options: A single multiple above the health-based limits for all appendix VIII constituents or constituent-specific multiples which vary for each toxicant. Since ECHO could potentially expand the waste streams regulated under subtitle C, EPA believes that constituent-specific characteristic levels are appropriate. As described in section IV, the Agency has information for approximately 200 constituents and is requesting any additional data to assist the Agency's efforts in making these determinations. If constituent specific data is not available, EPA will use a DAF of 100 for the remaining constituents with health based levels and verifiable test methods. The Agency would propose that this level minimizes short and long-term threats to human health and the environment for all constituents since it is based on very conservative physical dilution and attenuation assumptions. (See section VI for further discussion of exposure pathways and EPA's proposed justification of this finding.)

As explained later in this notice, EPA has quantifiable health risk data and appropriate analytic methods for about 200 constituents now in appendix VIII. It is these constituents which would be added to the TC under ECHO. For listed wastes containing other toxicants for which data is not available, the mixture and derived-from rules would continue to apply. In addition, testing methods would have to be available for detecting the constituents in the waste. Thus, under ECHO, the TCLP or other EPA approved test method would be used. Section IV describes the constituents eligible under this proposal.

Although implementation issues are discussed in more detail in section XI, the Agency summarizes them here. Under this option, generators who currently manage a listed waste would have to submit a one-time notification to the Agency that their previously listed waste now does not exhibit a characteristic. Generators would have to submit testing information and a certification to verify their claim. The Agency considers this one-time notification essential to its proper management of a transition from the current hazardous waste identification and tracking system to a system under ECHO. EPA would need to receive notice of changes in the status of these waste streams in order to allow EPA to review and enforce against changes that are not properly supported.

After the one-time notification, the ECHO approach would be implemented like the current characteristic system. Generators are responsible for determining whether their waste exhibits a characteristic. Generators may either test their waste or use their knowledge of the waste to determine whether it is characteristic. As envisioned under EPA's 1978 hazardous waste identification proposal and under this approach, the list of hazardous waste list would serve as a default list to allow generators an alternative method to identify (without the burden of continually having to test their wastes) those waste streams which almost always exhibit at least one characteristic. Generators of a listed hazardous waste could simply manage the waste stream under subtitle C.

Contingent Management Approach

The previous options for listed hazardous waste apply in all situations and, therefore, do not reflect the fact that the way in which waste is managed can modify the actual risks posed by a waste. If a waste is placed in a protectively designed landfill, the actual risk posed by the waste is significantly reduced. Therefore, EPA is also presenting several "contingent management" options, under which the ultimate disposal of a waste may influence the level at which it is exempted from subtitle C. The basic reasoning is that if a waste is managed safely, the criteria against which it is judged can be less stringent. Proven safe disposal can allow more concentrated waste out of subtitle C without increasing risk to human health and the environment so long as the waste is disposed of in accord with the

contingent management criteria. This approach could complement either the CBEC or the ECHO approaches.

If wastes could exit subtitle C control at different concentration levels contingent upon different waste management practices, the Agency will have made a significant step in transforming the current binary regulatory system (subtitle C/not subtitle C) to a system more focused on risk. Such a system could better tailor regulatory control to the variations in potential risks posed by the large volume of waste materials currently subject to subtitle C regulation.

To decide on the appropriate management practices that afford assurance that wastes leaving subtitle C control will be well managed, the expected route of potential exposure must be determined. The Agency is in this proposal limiting its contingent management options to wastes disposed of in landfill. In previous rulemakings, the Agency has determined that the primary route of exposure will be consumption of groundwater contaminated with leachate from the disposal landfill. Therefore, the Agency is today presenting contingent management options which diminish the likelihood of the occurrence of this route of exposure.

As discussed in section IX of this proposal, the Agency has modeled environmental releases from landfills using the EPACML model. The model was constructed to simulate the potential hazards from mismanagement of hazardous waste. In summary, the model assumes that hazardous waste is placed in an unlined, municipal solid waste landfill. Precipitation falls on the landfill and leaches hazardous constituents as it moves through the landfill. Leachate from the landfill then flows through the soil to the groundwater and then to drinking water wells.

Under the contingent management approach, the Agency intends to focus on actual management, not mismanagement, conditions if they can be reasonably assured. Thus, there are many potential ways to use the EPACML model to reflect actual conditions. For example, in section IX of today's notice, the Agency proposes using a less acidic leaching procedure to better model the actual leaching process if waste is place in a monofill (*i.e.*, not co-disposed with municipal solid waste).

The EPACML model was not specifically developed for modeling potential ground water contamination at individual sites. Rather, its purpose was to provide the Agency with a tool for projecting impacts to ground water on a national basis. Although the CML model is used in making delisting determinations (see 56 FR 32993, July 18, 1991), the volume of waste is the only parameter which is varied. The model is not recommended for developing site-specific DAFs taking into account the exact physical/chemical attributes of a site. Instead, the Agency requests comment on whether to and how to tailor DAFs to site conditions. Can this be done on a national basis, using certain factors that can be projected to affect DAFs uniformly across the country? Or should DAFs be tailored specifically to a site, using the conditions of the site and a more appropriate site-specific model to adjust the DAFs? Can a system using a combination of both approaches be employed?

The contingent management options presented in today's Notice involve consideration of five specific factors which affect DAFs. Each involves the actual conditions existing at a landfill site. Those conditions can act individually or in combination to mitigate the potential for leachate to contaminate ground water. The five factors are described below.

First, one factor influencing contingent management option is disposal in a lined landfill with specific design criteria. The Agency promulgated on October 9, 1991 performance and design criteria for subtitle D municipal solid waste landfills (see 56 FR 50978). To satisfy the performance standard, these criteria require a low hydraulic conductivity soil cover on the landfill and a composite liner, consisting of flexible membrane liner and a two-foot barrier soil layer under the landfill.

Second, the amount of potential exposure also varies with the average amount of precipitation that falls on a landfill. Precipitation is the primary source of leachate; lower amounts of precipitation would cause less leachate and less leachate migration beyond the barriers of the landfill. Another possible contingent management option would determine different DAFs based upon the average expected precipitation rate in the region the landfill is located. The Agency could determine geographic regions based upon climatic zones, could require precipitation data from the most appropriate certified rain gauge, or could require site-specific information. However, in order to do this the Agency would need to verify that the other model inputs are appropriate for each of the regions or else develop new region-specific inputs. Therefore, the Agency solicits data and comment on technically appropriate ways to set DAFs based on rainfall levels.

A third factor which could warrant a contingent management option is the size of the landfill. In the TC rulemaking, the Agency used a national distribution of municipal landfill sizes—an appropriate approach given the national scope of the regulation and the assumed mismanagement scenario. The Agency recognizes that the DAF varies significantly with the size of the landfill. For any given distance from the landfill boundary, larger landfills have lower DAFs. Therefore, when considering actual management practices at specific landfills, the size of the landfill will be known. One of the contingent management option below is to allow a landfill to petition for a specific DAF (and thus contingent exemption from subtitle C under CBEC or ECHO) based on the landfill size. EPA points out that this is similar to the delisting program where the volume of waste dictates the DAF used, thus implicitly taking landfill size into account. The Agency notes that landfills which accept only hazardous or industrial solid waste are generally smaller than municipal solid waste landfills.

A fourth factor which significantly influences the potential migration of contaminants is the hydraulic conductivity of the soil surrounding the landfill. If leachate infiltrates out of the landfill, it must flow through the surrounding soil to reach a well or surface water body. If the hydraulic conductivity of surrounding soil is relatively low—such as in soils dominated by clays—then the flow of any potentially contaminated leachate could be effectively retarded for long periods of time. Thus, the Agency believes that landfills located in soils with low hydraulic conductivities (for example, 10^{-6} cm/s or lower) could provide an extra level of environmental protectiveness worthy of a contingent management exemption option. EPA believes this factor may not be appropriate to generate national DAFs, using the EPACML model since the other model inputs may also vary in areas of soils with low hydraulic conductivity. The Agency seeks comment on several implementation issues for this option. The Agency could issue national DAFs or multiples above existing DAFs corresponding to different hydraulic conductivities—one for 10^{-6} cm's, one for 10^{-7} cm/s, etc. Alternatively, the Agency could require petitioners to obtain site-specific measurement of local soil conductivity. If the Agency asked for site-specific information, the Agency requests comment on the level of detail

appropriate for a contingent exemption based on soil conditions.

Finally, the fifth possible contingent management factor would be a demonstration that no operating drinking water wells lie within a specific radial distance from the facility. To account for this factor, landfill operators could show that if the nearest drinking water well was a certain radial distance (1000 feet, 2000 feet, etc.) from the facility, the landfill could manage wastes contingently exempt from subtitle C at a higher concentration than excluded under CBEC or ECHO. This higher concentration level or DAF could be determined with the EPACML. The Agency requests comment on how, under such an approach, a facility could assure that wells would not be located closer to the site in the future.

Contingent Management Options

In today's Notice, EPA is proposing two alternative approaches combining the structural approaches outlined above (*i.e.*, CBEC and ECHO) with contingent management. The first one involves setting exemption criteria contingent on disposal in a landfill meeting certain design requirements. This option would apply nationally rather than on a site-specific basis. The second option involves determining a threshold at which a waste would become characteristically hazardous even with disposal in a landfill with specific design criteria dependant upon size, location, and climatic conditions. These, too, would be applied on a national basis. Finally, the Agency is also interested in comment on applying the contingent management approach on a site-specific basis by altering the exemption criteria based on the site-specific conditions of hydraulic conductivity and the distance to a private drinking water well.

Option 7. CBEC Modified by Contingent Management

The Agency is proposing a hybrid option which incorporates aspects of the risk-based, technology-based and contingent management options discussed above, for establishing a concentration-based exit from subtitle C. This option establishes two sets of risk-based levels: one set is more conservative and does not condition subsequent management of the waste (tier 1); the second set is less conservative and requires subsequent management of the waste in a specified manner (tier 2). If listed hazardous wastes (including residuals and mixtures) leach concentrations of toxic constituents at or below the more conservative set of health-based levels, the waste would no longer remain under subtitle C jurisdiction (note: these wastes will still remain subject to the characteristics defined at 40 CFR 261 subpart C). This set of risk-based levels are the levels described in the first set of options where wastes, treatment residuals, and waste mixtures, which contain levels of toxicants at or below the risk-based exemption levels would be exempt from subtitle C control. These levels might also be considered minimum threat levels under section 3004(m) of RCRA (*i.e.*, the LDR program) meaning that BDAT treatment would not be required below this level. The Agency is proposing that these levels (tier 1) be ten times the health-based number for each toxicant, which is slightly below the most conservative levels for which wastes have been delisted. The Agency believes that selecting these levels, which are presented in Appendix 1 of today's notice, would be one way to harmonize today's proposed rule with other RCRA programs. This factor (10) represents a level which may be fully protective in the context of setting national levels at which subtitle C jurisdiction ends. A multiplier of 10 corresponds to approximately the 95th percentile levels generated from EPACML simulations used to support the Toxicity Characteristics (TC) rule (See 55 FR 11826). For situations where unusual site conditions may dictate a factor of less than 10, the Region or authorized State would be able to require, as necessary, a more stringent factor (See Regional Override Authority discussion in section IX of today's notice). The Agency requests comment on the appropriateness of selecting a factor of 10 times health-based numbers for levels where subtitle C jurisdiction ends without condition of subsequent management.

The second set of risk-based exemption criteria (tier 2) is contingent upon specified waste management. Today's notice is proposing, as a first phase, to allow only listed hazardous wastes which has met the applicable Land Disposal Restriction (LDR) treatment requirements to be eligible for the contingent management exemption (contaminated media are addressed separately in Today's proposal). Once the LDR requirements are met, concentrations of toxic constituents which leach from the residual are compared with the less conservative set of health-based exemption levels which is tied to specific management standards. The Agency is proposing to establish the less conservative set of risk-based levels at one hundred times the health number for toxic constituents. LDR residuals which leach toxicants at concentrations greater than ten times the health numbers, but at or below one hundred times the health number and are managed according to the requirements set forth at 40 CFR part 258 subpart D, the municipal solid waste disposal facility design criteria promulgated on October 9, 1991 (56 FR 50978), or State equivalent, will not be regulated under RCRA subtitle C. The municipal solid waste landfill regulations would set out default design and operating requirements. The Agency is proposing less conservative risk-based exemption levels contingent upon management in a landfill that meets specified design requirements because of the degree of protectiveness provided by the design standards. The Agency requests comment on alternative risk-based exemption levels coupled with this management practice as well as other management practices. These levels are also listed in appendix 1.

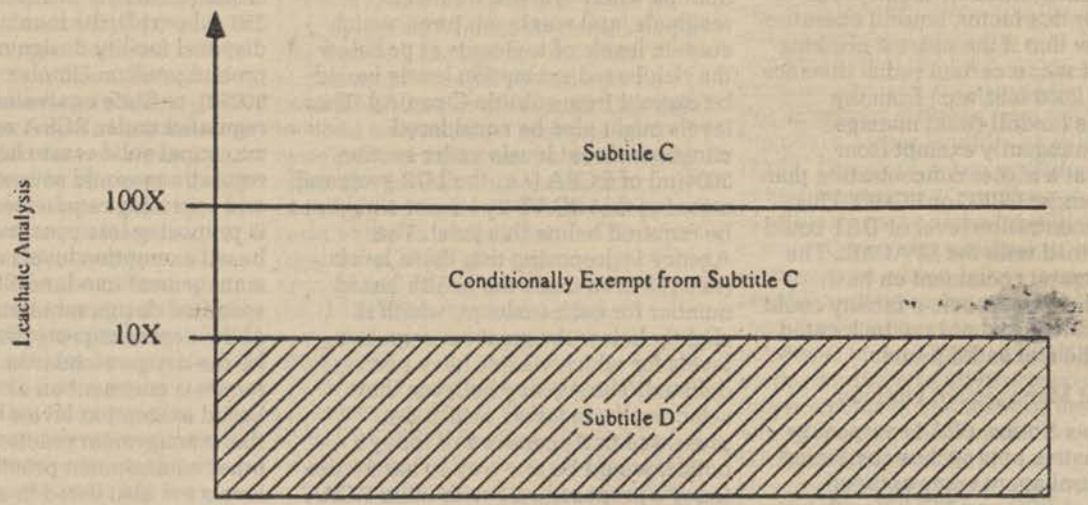
EPA proposes that CBEC wastes in this contingent tier would be able to be exempt based on management in an alternative design approved by the Federal government, either for municipal solid waste (approved through authorization of the State municipal solid waste program) or for CBEC wastes (approved through authorization of the State's hazardous waste program but meeting the design standard for the municipal solid waste landfills in 40 CFR part 258).

EPA proposes that at a minimum, the design and construction requirements of 40 CFR part 258 would be necessary pieces of this conditioned exemption. This would include liners unless there was an approved State alternative design. EPA believes these elements could realistically be installed and relied upon in the context of a self-implementing regulation. The Agency seeks comment, however, on the need for other components of the 40 CFR part 258 standards, including elements such as covers, groundwater monitoring phased in on the same timeframe as for municipal solid waste landfills, financial assurance and others. EPA also seeks comment not just on whether these elements are necessary, but also whether they realistically can be elements of a largely self-implementing, conditional exemption.

Residuals which leach toxicants at concentrations greater than one hundred times the health numbers, even after achieving the specified LDR treatment standards, will remain regulated under RCRA subtitle C. Figure 1 depicts the two tiers of exemption levels and the

jurisdictional authority associated with these levels. The Agency requests comment on all aspects of this proposed option.

Figure 1: Depiction of CBEC Contingent Management Option for Wastes



Option 8. ECHO Modified by Contingent Management

The Agency is also proposing today another hybrid option which combines the ECHO structural approach with contingent management options. While the ECHO approach sets uniform entry and exit levels for subtitle C management, for the reasons discussed above the Agency believes that establishing additional exit levels based on specific disposal practices would begin to implement the Agency's contingent management structure and would provide adequate protection of human health and the environment.

Under this proposal the Agency would adopt the ECHO approach discussed above in Option 6 for wastes entering and exiting subtitle C control and site-specific contingent management exemptions.

In the ECHO approach, the characteristic level which determines whether a waste is hazardous under subtitle C is the product of the health-based limit and a constituent-specific factor. The factor reflects the expected dilution or attenuation of the constituent as it moves from the waste to the receptor. In the TC rulemaking and the ECHO approach, the Agency has identified the potential consumption of contaminated groundwater as the key pathway of concern. This pathway, as modified by EPACML, will be used to develop new, higher thresholds at which a waste would become characteristically hazardous even with managed disposal.

Therefore in considering the greater degree of protection from alternative contingent management options, EPA proposes to develop input data for the EPACML model to reflect the landfill disposal scenarios for each contingent management option. The EPACML will be used to develop new, higher thresholds at which a waste would become characteristically hazardous even with managed disposal.

One contingent management option under this proposal would be disposal in a lined landfill meeting specific design criteria. The Agency promulgated specific design and construction criteria as the default option in the recent subtitle D rulemaking (40 CFR 258). EPA believes these elements could realistically be installed and relied upon for a self-implementing regulation. The Agency proposes to use this data to develop a new, higher threshold at which wastes would become characteristic wastes even though these wastes are disposed in a facility meeting these stringent design criteria. The Agency proposes to set a generic threshold under this option, which, like the TC rulemaking, would be a composite factor to account for distribution across the continental United States of different soil and climatic conditions. The Agency requests comments on this approach.

Landfill size may also affect the risks associated with waste disposal. The Agency proposes to set different national thresholds for landfills with different sizes. For example, using the EPACML model for a fixed landfill size, the Agency may find that a 40 acre landfill yields a factor of 500 above the health based levels, a 100 acre landfill a factor of 200, etc. The Agency requests comment on this approach.

Another contingent management option would set different thresholds for landfill located in areas with low precipitation. As discussed above, the Agency believes that low precipitation will generate less leachate from a landfill. The Agency proposes to use the same precipitation modeling techniques for setting thresholds under this proposal as was done in the TC rulemaking. The Agency requests comment on this approach. Unlike the other options above, EPA believes that this issue may require changing more than one input parameter in EPACML to derive the appropriate thresholds. For example, two other EPACML input parameters—soil types and depth to the unsaturated zone—vary with the amount of precipitation-a region

receives. Therefore, the Agency is proposing that, if EPA adopts this option, it would recalculate the nation weights used in the TC rulemaking to account for the regional limits of this proposal.

Finally, the Agency is considering an alternative option that would allow generators to petition EPA to adjust the characteristic level for wastes based on site-specific conditions. The Agency is considering two contingent management options based on site-specific conditions: one option for landfills located at sites with low hydraulic conductivity and the second option for landfills with wells located within certain greater radial distances from the landfill. The generic values for the constituent would be multiplied by a factor which takes into account low hydraulic conductivity or proximity to nearest well to determine the contingent management threshold. The Agency requests comments on alternative site-specific contingent management approaches.

As discussed above, the Agency is concerned that EPACML may not be the appropriate model to use for site-specific determinations of contingent management. The Agency could require petitioners to submit a site-specific groundwater fate and transport model with site-specific inputs. This approach would give more confidence that the model's predictions accurately predict the actual hydrogeology of the landfill site. The Agency also could use the EPACML model and require a certain number of site-specific inputs, e.g., soil conditions, depth of unsaturated zone. The Agency requests comments on this issue.

Commenters should keep in mind a principal concern regarding site-specific modeling. Assigning site-specific threshold levels could result in a significant resource burden to regulatory agencies and the regulated community. When a large number of petitioners seek thresholds tailored to their sites, regulatory authorities must analyze the modeling approach, the assumptions inherent in the modeling approach, and the input parameters to determine their validity.

Finally, the Agency requests comment on how should the Agency determine thresholds for landfills that meet two or more contingent management conditions—a landfill constructed with the subtitle D design criteria located in an arid area. One option is to add the generic factors to determine the threshold. The Agency also requests comments on how to assign thresholds for landfills with a combination of generic and site-specific factors.

In their March 18, 1992 letter to the Agency, the Department of Energy (DOE) said that "some hazardous and radioactive mixed wastes streams managed by the Department, energy industries, and other affected parties, contain minute concentrations of listed hazardous constituents, pose no appreciable risk to human health or the environment, but are nevertheless subject to costly regulation under subtitle C." DOE suggested to the Agency that hazardous wastes mixed with radioactive wastes may be more appropriately regulated under the existing requirements of the Atomic Energy Act (AEA). EPA expects that the general approach in today's proposed regulation would allow for exemption of mixed wastes that contain very low concentrations of chemically-hazardous constituents for RCRA subtitle C requirements. However, there is also a suggestion that for mixed wastes with higher concentrations of chemically-hazardous constituents regulated because of RCRA listings, regulation under the AEA already requires measures intended to control exposure to and releases of radioactive hazards that would also protect human health and the environment by limiting exposure to, and release of chemically-hazardous constituents from mixed wastes. EPA solicits comment as to whether it would be reasonable to develop a contingent management approach for mixed wastes where the conditional exemption criteria would be compliance with the regulations that exist to control the radioactivity hazards.

Phasing

Lastly, an issue that impacts both approaches proposed today is phasing. The CBEC approach will require phasing, because there are only 200 toxic constituents for which the Agency has health-based number and analytical methods. As a first phase, the Agency could promulgate CBEC levels for these 200 and the remaining appendix VIII constituents could be added as methods and health-based numbers are developed (see discussion of CBEC approach in part B of this section and discussion in section IV).

For the same reason, the ECHO approach will require phasing while methods and health-based numbers are developed for the remaining appendix VIII constituents as well. During the transition period, the mixture and derived-from rules would remain in effect for wastes containing toxicants which were not included as part of ECHO. Also, until constituent-specific DAFs could be developed for all toxic constituents, a default DAF of 100 would be used until a DAF for each constituent could be developed (see discussion of the ECHO approach in part C of this section and discussion in section IV).

Also, phasing could also be directed towards certain wastes types or facilities for implementation and resource reasons (see phasing discussion in section IV). In summary, under the CBEC approach, the Agency proposes that all wastes, residuals, and media be eligible for the CBEC exemptions. However, the Agency is considering two possible phased options based on waste type: A limitation only to treatment residuals and a limitation only to media under a supervised remediation. In contrast, under the ECHO approach, the Agency would likely not phase in this approach by waste type, but by constituent; wastes containing hazardous constituents not included in the toxicity characteristics would remain subject to the mixture and derived-from rules. The Agency requests comment on the advantages and disadvantages of phasing and on alternative approaches to phasing.

Additionally, should comments support incorporation of contingent management in either the CBEC or the ECHO approach, the Agency may find it necessary, due to time constraints and implementation concerns to phase in portions of this approach. This could mean first promulgating the more conservative exemption criteria under CBEC or ECHO and later promulgating less conservative exemption criteria contingent upon specified management under either approach. In addition, in this rulemaking the Agency proposes to allow contingent management only in landfills.

E Approaches for Contaminated Media

In developing today's proposed rulemaking, EPA considered a number of issues regarding how the two conceptual approaches (CBEC and ECHO), which could be modified with contingent management, should be applied to contaminated media; that is, soils, groundwater, surface water and sediments that are contaminated with listed hazardous wastes. Substantial volumes of contaminated media are commonly generated and managed in the course of RCRA and CERCLA remedial actions. Thousands of other sites across the country may also potentially involve cleanup of media that may be subject to RCRA subtitle C requirements. It has been the Agency's experience with remedial programs to date that determinations of when such materials are subject to the RCRA

hazardous waste management standards can affect not only the costs of cleanup actions, but also the technical approach used, timing of the cleanup, and procedural requirements, such as the need to obtain a RCRA permit before conducting certain cleanup activities.

RCRA subtitle C regulations have to date generally not distinguished between wastes and contaminated media. Units in which contaminated soils and groundwater are treated, stored or disposed of must meet the same design and operating standards as those for "as generated" hazardous wastes. Other RCRA requirements, such as the land disposal restrictions, also apply to contaminated media, although some LDR treatment standards are being developed specifically for contaminated soils.

Today's proposal is expected to have an important and positive impact on the Agency's remedial programs. It should define much more clearly the jurisdiction of subtitle C in relation to contaminated media; in addition it should enhance the flexibility of remedial decisionmakers to apply management standards to materials that are contaminated but do not merit the full subtitle C level of protection.

Under the ECHO approach, one option for the Agency would be to consider contaminated media to be like other RCRA subtitle C wastes. Similar to their responsibilities for solid wastes, generators would have to test or rely on their knowledge of the media to determine whether it exhibits one of the characteristics. This approach for media would have the benefit of the simplicity of a characteristic-based system. For example, the tests for media would be the same as waste. However, the Agency has long recognized the special features of media which could warrant special regulation. These are described below.

EPA believes that there may be sound reasons for developing some explicit provisions under the subtitle C system for contaminated media. For one thing, the physical characteristics of contaminated media can be quite different from as generated wastes. Contaminated soils, for example, are highly variable in their composition and handling characteristics. Treatment of such soils can thus be particularly difficult. It should also be understood, however, that some contaminated media can be essentially identical to as generated wastes—contaminated groundwater, for example, may be very similar to dilute wastewaters generated from industrial processes.

Although some contaminated media might be distinguished from as generated wastes on the basis of their inherent physical/chemical properties, perhaps a more important distinction has to do with the type and amount of Agency oversight that is given to cleanup activities under RCRA and CERCLA, as opposed to ongoing generated waste streams. Remedial actions under these authorities are typically conducted with substantial Agency oversight; remedial decisions are made by the Agency based on a thorough study of the nature and extent of the contamination problems at the site. In contrast, most RCRA subtitle C regulations are uniform, national standards, and as such must require a level of protection sufficient for a highly diverse universe of facilities and environmental settings.

In addition, EPA has found that subtitle C requirements, when applied to contaminated media generated during cleanups (and indeed, more broadly, to remediation wastes), can act as a disincentive to more protective remedies, and can limit the flexibility of a regulatory decisionmaker in choosing the most practicable remedy at a specific site. In contrast, RCRA subtitle C regulations, when applied to newly generated wastes, ensure that the wastes are handled according to stringent national standards; due to the cost of subtitle C management, they also create a significant incentive for waste minimization and process changes to eliminate hazardous waste generation. Yet these same requirements, when applied to contaminated media, provide a comparable incentive for leaving wastes in place, or for selecting other remedies that minimize regulation under subtitle C.

EPA recognizes, of course, that both Superfund and RCRA provide it the authority to compel specific remedies, as long as the remedies are consistent with the goals of the statutes; under the current programs, the Agency can require facility owner/operators or responsible parties to excavate contaminated media (*e.g.*, soils) and manage them fully in compliance with subtitle C. Similarly, in a fund-financed remedy under Superfund, EPA can use CERCLA funds to effect a similar remedy. Thus, through its regulatory authority, EPA can at least in theory override any regulatory disincentive against a given remedy. In its conduct of the Superfund and RCRA programs, however, EPA has come to recognize the fact that RCRA subtitle C requirements will apply to some remedies and not to others, and can influence the remedy selection process in undesirable ways. For example, compliance with subtitle C disposal requirements may completely eliminate from consideration remedies that would otherwise meet Superfund or RCRA remedial standards and that might be the most sensible remedy from a technical point of view. In such cases, the regulatory decisionmaker might be faced with the dilemma of choosing between two or more extreme options, such as a remedy involving containment in place versus removal and management according to full RCRA subtitle C standards, without having the opportunity to consider a middle option that might be fully protective, in compliance with Superfund or RCRA cleanup goals, and acceptable to the local community. In such cases, practical considerations and the need for prompt action may often force the decisionmaker to select the less protective of the available extremes.

More broadly, under Superfund and RCRA corrective action, the regulatory decisionmaker must address a situation that is already unacceptable—that is, a situation which needs remediation. The decisionmaker's goal in such a case is to select a remedy that is fully protective, yet that reflects the technical and practical realities of the site. In addressing that situation, the decisionmaker needs the flexibility to consider a full range of strategies so that one may be selected that promptly, effectively, and permanently addresses the problem. EPA believes that constraining this range of strategies by requiring compliance with subtitle C disposal standards for wastes "generated" during remediation can often lead to remedies that are not cost-effective and that in some cases may actually be less protective solutions than the remedies that otherwise would be chosen.

The above considerations—the physical and chemical differences often found between contaminated media and as-generated wastes; the level of Agency oversight over remedial actions; and the counterproductive constraints that subtitle C requirements can impose on the remedy selection process—suggest that a somewhat different approach to regulating contaminated media (and perhaps remediation wastes) may be appropriate under RCRA subtitle C. In light of this, the Agency is proposing for comment in today's rule three alternatives for handling contaminated media that would allow EPA to consider certain site-specific conditions in making subtitle C exemption decisions in the context of remedial actions. The three alternative

regulatory approaches for media are discussed below.

Media Alternative 1: Contingent Management

This alternative would be essentially the same as contingent management for wastes, as described previously in this preamble. Thus, media contaminated with listed hazardous wastes would be exempted from subtitle C if the constituent concentration levels were at, or lower than, the levels specified for lower tier (*e.g.*, more stringent tier) of CBEC or ECHO, or for the upper tier (*e.g.*, less stringent tier) if the media were disposed contingent upon specified management. For CBEC, the upper tier would be contingent upon disposal in a landfill meeting the design criteria specified in 40 CFR 258 subpart D or State equivalent. For ECHO, the upper tier would be contingent upon the landfill meeting the criterion proposed in Option 8.

In the case of soils that meet the lower tier exemption levels, management and ultimate disposition of the soils could essentially be unrestricted. It is possible, therefore, that direct contact exposure (*e.g.*, ingestion by children) to such soils could occur. However, the lower tier exemption levels are (except for metals) specified as leachate concentrations, and do not take into account direct contact exposure. It is therefore possible that contaminated soils that meet the lower tier (leachate) exemption levels could have total concentrations of constituents that might not be fully protective from the standpoint of direct contact exposure. The Agency requests comments as to whether for soils, the lower tier exemption levels should be specified as both leachate levels and levels based on direct human contact with the soils.

Relationship with LDRs. In a separate rulemaking, scheduled to be published in the **Federal Register** later this year, EPA intends to propose treatment standards for hazardous soils, for compliance with the RCRA land disposal restrictions (LDRs). In developing the HWIR and LDR proposals, the Agency has considered a number of issues relating to how the LDR treatment standards for soils will relate to the HWIR exemption levels for soils. Although further discussion of these issues will be included in the forthcoming LDR proposal, EPA believes that it is important in today's proposal to outline the relationship between the subtitle C exemption levels and LDR standards for soils.

The final HWIR rule will determine which soils contaminated with listed hazardous wastes will be subject to subtitle C regulation, including the LDRs. The LDRs will specify the standards to which contaminated soils must be treated before they may be disposed. Although the regulatory effect of the two rules is different, the general objectives in establishing the specific levels for soils in both rules are in many ways consistent.

In the LDR rule, EPA expects to propose levels based on minimized risk for soils that are protective assuming direct contact (*e.g.*, ingestion) and leaching of constituents to groundwater. These concentration levels thus represent the levels that the Agency believes pose minimal threats to human health and the environment. The "minimal threats" levels will be the "floor" standards for treatment; that is, treatment of soils will not be required below those levels. For some constituents, where the minimal threats levels cannot be achieved because of treatment technology limitations, a higher, technology-based level would be specified as the applicable treatment standard for that constituent. EPA is proposing that any of the options in this rule which are promulgated as final exemption criteria (not contingent upon management) would also represent a "minimized threat" level which also would become the BDAT floor. The Agency requests comment on this alternative for contaminated media. EPA also requests comment on the relationship between the contingent management approach and LDRs.

Media Alternative 2: Contingent Management with Provisions for Site Specific "Contained-In" Determinations

This alternative would adopt the lower and upper tier exemption levels, but would also provide a mechanism for determining alternative exclusion levels based on site-specific and waste-specific conditions. This alternative would thus codify the existing "contained in" rule for determining when contaminated media no longer "contain" listed hazardous wastes, and thus are no longer subject to RCRA subtitle C. Fundamentally, this alternative is based on the premise that it is important and necessary for the Agency to be able to consider, in certain situations, site-related conditions and waste-specific characteristics in establishing subtitle C exclusion levels.

The lower and upper tier exclusion levels as proposed today are intended to be generic, national standards that are protective of human health and the environment in all but highly unusual situations. They are thus based on a set of assumptions regarding potential exposure, fate and transport in the environment, and human health effects. In developing such generic, protective levels, it is recognized that, given particular site conditions and waste characteristics, higher concentrations could be fully protective in some cases. For example, it may make sense to exclude soil from subtitle C regulations if the soil is contaminated only slightly above the lower tier levels, is in a remote location, or where groundwater is not of drinking water quality. For such situations, the current contained-in rule would allow the Agency to determine that the soil does not "contain" listed hazardous wastes. Alternative 2 would codify the contained-in rule and provide an administrative mechanism for determining when contaminated media will be exempted from subtitle C, based on site specific conditions. The Agency intends to propose specific regulations for codifying the contained-in rule, including procedures and decision factors for making such determinations, in the forthcoming LDR "Phase II" proposal for contaminated soils.

EPA proposes that contained-in determinations would be made based on the inherent characteristics of the contaminated media and the environmental conditions at the site. Contained-in determinations would therefore not take into account the lessening of exposure or risk potential that might occur if the contaminated media were managed in any particular way. For example, in the case of a site with contaminated soil, the decision as to what a protective contaminant concentration level might be based on or otherwise affected by the fact that the soils would be placed in a lined and capped landfill. The Agency intends that contained-in determinations would be based on conservative evaluations of risk to human health and the environment, assuming essentially unconstrained disposition of the contaminated media.

Relationship to LDRs. In terms of applicability of LDRs to contaminated media, a site-specific contained-in determination would have the same effect as a CBEC, ECHO, or lower tier exclusion. Media contaminated at levels below the contained-in concentrations as determined by the Agency for those media at that site would no longer be subject to Subtitle C of RCRA and would satisfy the LDRs, because they would meet minimum threat levels. Thus, LDR treatment of media would not be required below the site-specific contained-in levels. EPA solicits comments on this alternative for applying subtitle C exemption levels to contaminated media.

The Agency notes, however, that if it selected this alternative (or any of the other media alternatives), certain types of dilution to achieve the exemption levels would not be allowed. The legal authority to limit dilution comes from section 3004(a)(3) of HSWA as well as the goals and language for the LDR provisions (see 55 FR 22664).

Media Alternative 3: Contingent Management with Provisions for Site-Specific Contingent Management Determinations

The contingent management approach being proposed today for wastes would allow subtitle C exclusion determinations to at least partially account for how the wastes will be disposed. The disposition of wastes in a lined landfill would thus be considered as a factor as to the potential risks posed to human health and the environment by that waste (*i.e.*, its "hazardousness"). The third alternative being proposed today for applying exemption levels to contaminated media would extend this concept to allow such factors to be evaluated on a site-specific basis, in the context of RCRA or CERCLA remedial decisions.

This alternative would be similar to Alternative 2, in that it would provide the Agency with a mechanism to consider waste-specific and site-specific conditions in determining when contaminated media at a site should be subject to subtitle C regulation. While a contained-in determination would not be made contingent on any particular disposal method for the contaminated media, a site-specific contingent management determination would allow such waste management factors to be considered. In practice, EPA believes this approach could be beneficial in providing greater flexibility for remedial decision makers to apply management standards to contaminated media that would be proportionate to the actual risks posed by those media at a given site. If, as EPA believes, the concept of subtitle C exclusion levels based on contingent management is fundamentally sound, it may be reasonable to allow the Agency to apply the concept on a site-specific basis, where the Agency has sufficient knowledge of site conditions, and control over the management and disposition of contaminated materials. The legal basis for this alternative is similar to the legal basis for the contingent management approach for wastes: Because EPA would be able to ensure that remedial wastes managed under the Agency's oversight would not be "mismanaged", the waste would not be "hazardous" under RCRA section 1004 and "should" not be regulated as hazardous under RCRA section 3001(a).

To illustrate how this alternative might be applied, an example situation could be a site with two areas (A and B) of soil that is contaminated with the same listed wastes, at generally the same concentrations. An effective and protective remedial approach could be to install a cap over the contaminated soils. This would not trigger subtitle C requirements, since the hazardous soils would not be treated, stored, or disposed of. However, if the soils from Area A were to be excavated and consolidated into Area B, the soils from area A would be subject to subtitle C, in that placement of the hazardous soils into Area B would constitute disposal. Under the proposed Alternative 3, however, the Agency could determine that the soils in Area A, when disposed of in Area B, could be excluded from subtitle C due to the low potential risks that would be posed to human health and the environment by the soils, when they were disposed of in the capped unit.

An important feature of this alternative approach would be that the contaminated media would be subject to subtitle C standards prior to their disposal. Thus, if the contaminated soils in the above example were to be treated in a tank before being placed in the disposal unit, the tank would be subject to the applicable subpart J standards of part 264 or 265. Likewise, the Agency proposes that contaminated media that are disposed of off-site would not be eligible for site-specific contingent management determinations.

In making site-specific contingent management determinations, EPA would have to carefully consider considerable amounts of data pertaining to the contaminated media, site characteristics, and the nature and long-term effectiveness of the engineered containment systems (*i.e.*, caps, liners, etc.) of the disposal unit. Due to the amount of information and oversight that EPA believes would be needed in making site-specific contingent management determinations, it is proposed that such determinations would only be applicable in the context of corrective actions conducted pursuant to RCRA or CERCLA cleanup authorities. EPA believes that, given the implications of such determinations, and the need to ensure that contingent management determinations are based on sound technical judgment and a thorough knowledge of the site, only RCRA and CERCLA actions provide the requisite degree of Agency oversight to ensure the soundness of such decisions. Similarly, EPA believes this approach should be limited to on-site disposal because of the focus of EPA's attention and authority on the remedial site. EPA also acknowledges that some States may have enforcement authorities or other legal mechanisms that provide a similar level of control and oversight as under RCRA or CERCLA. EPA solicits comment on whether site-specific contingent management determinations should be available for State-supervised cleanup actions under State authorities. EPA also solicits comment as to how such determinations might potentially be made available to cleanup actions that are not compelled under RCRA, CERCLA, or State authorities.

Although today's proposed Alternative 3 would apply only to contaminated media, EPA believes that conceptually, the same decision process could be applied to other types of hazardous wastes that are generated and managed pursuant to remedial actions. For example, sludges and other solid wastes are often managed as part of cleanup actions at RCRA and CERCLA facilities. The same logic could be applied to such wastes (*i.e.*, that would not be considered contaminated media), in making determinations as to how RCRA subtitle C should be applied. Although such wastes could be identical to as generated hazardous wastes, the degree of site-specific control that is inherent in Agency supervised remedial actions might be sufficient to allow contingent management determinations for all wastes, including contaminated media, that are managed pursuant to RCRA or CERCLA remedial actions. EPA specifically solicits comment on how and whether such determinations could be provided for remedial wastes other than contaminated media.

Relationship to LDRs. The discussion above addresses an approach under which contaminated media (and perhaps other remediation wastes) would be excluded from RCRA subtitle C jurisdiction at the time of on-site disposal in compliance with an Agency-selected remedy—assuming of course that the remedy fully met the protectiveness standards of Superfund or RCRA corrective action. It does not, however, address the question of whether the wastes would still have to meet the RCRA land disposal restrictions, even though they were no longer hazardous.

Generally, EPA has taken the position that the Agency has the authority to determine for each waste stream whether the RCRA land disposal restrictions take effect at the point a hazardous waste is generated. If this

approach were applied to contaminated media under Alternative 3, treatment to land ban standards would be required for wastes disposed of on-site in land disposal units, even if the overseeing regulatory agency determined that the waste was nonhazardous (under today's proposed exemption levels) at the time of disposal.

EPA has articulated in the "third third" LDR rule (see 55 FR 22520, 22651; June 1, 1990) its legal and policy reasons for its general approach of retaining discretion as to where to apply the LDRs. The Agency described these reasons in detail in the "third third" LDR rule (see 55 FR 22520, 22651, June 1, 1990). For some waste streams, the Agency believes the LDRs apply at the point of generation. At the same time, however, EPA has taken an alternative approach in the case of particular wastes and waste management situations, applying the land disposal prohibitions to those streams if they are hazardous at the point they are disposed of, but not applying the prohibitions at that point if the wastes are no longer hazardous (see 55 FR 22664). EPA has taken this alternative approach only where it was supported by other policy considerations—such as integrating the land disposal restrictions with regulatory programs under the Clean Water Act or the Safe Drinking Water Act. EPA also believes that this approach may be justified for contaminated media excluded from subtitle C under today's proposal, if the third alternative discussed above is adopted. In such a case, applicability of the land ban at the point of generation would serve as a significant disincentive to many acceptable remedies and would constrain the range of protective remedies available to the regulatory decisionmaker. On the other hand, applying land ban at the point of disposal would allow a more effective balancing of possible remedies.

This point can be illustrated by the specific example discussed above, where two areas (A and B) of soil are assumed to be contaminated with hazardous waste at similar concentrations. In such a case, the decisionmaker would ideally want to look at a range of options, including capping in place; consolidating the soils in one of the two contaminated areas; building a new engineered landfill and disposing of the wastes in that landfill; excavating, partially treating the waste, and redisposing of it; and removing the waste, treating it to RCRA LDR standards, and redisposing of it. Yet, if RCRA LDR standards were to apply to the waste as a matter of law (or of ARARs) at the point of "generation" (*i.e.*, excavation), all but the first and the last options would probably be eliminated from consideration, regardless of how protective, practicable, or desirable the other options were. In such a case—depending on the specifics of the situation—capping in place might have to be chosen as the only practicable or technically feasible remedy (*e.g.*, because of the volumes of media involved, materials handling problems, or local opposition to specific treatment options, such as thermal treatment). EPA believes this result would largely undermine the goals of Alternative 3, because it would significantly constrain the Superfund and RCRA remedy selection process, and in some cases lead to less protective remedies. For this reason, EPA believes that, if Alternative 3 is adopted, sufficient policy justification may exist to apply land disposal restrictions at the point of disposal in specific remediation settings.

EPA solicits comments on all aspects of this alternative for addressing contaminated media. In particular, the Agency solicits comment on the appropriateness of including within this alternative a new approach to the land disposal restrictions—that is, applying these restrictions to hazardous waste at the time of disposal—and on whether this alternative should be expanded to include remediation wastes other than contaminated media.

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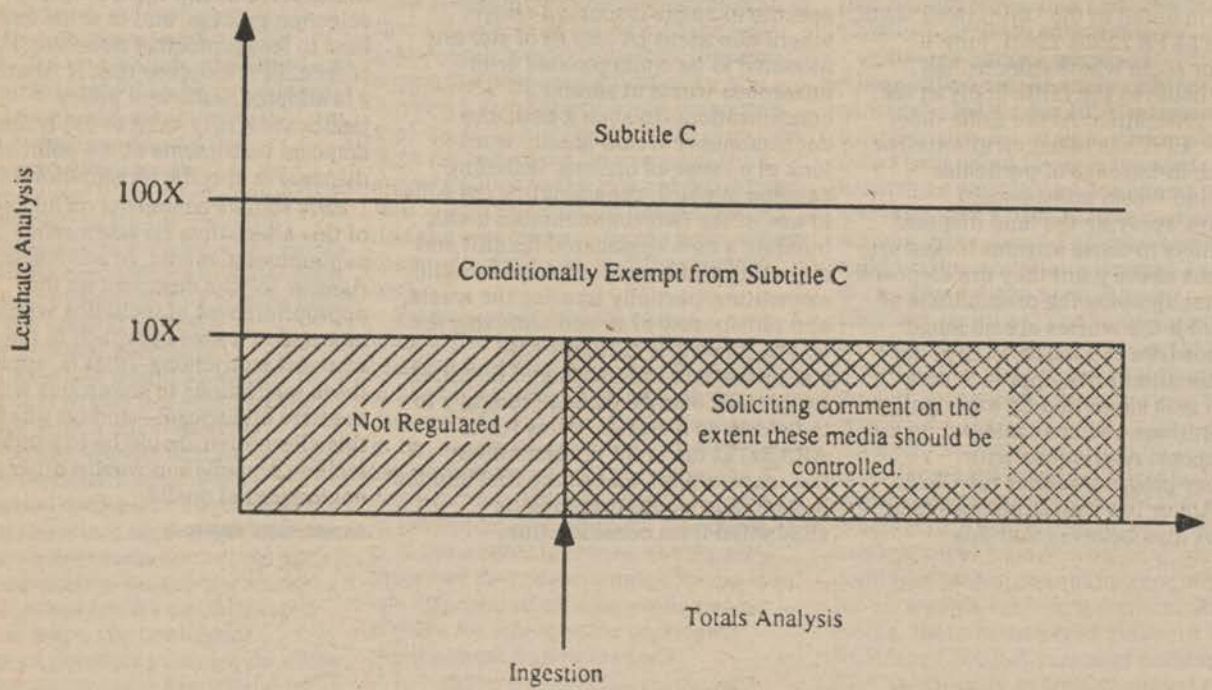
Figure 2: Depiction of Contingent Management Options for Media



IV. Waste Applicability

In order to reduce the unnecessary regulatory burden of managing dilute wastes, treated wastes, and certain contaminated materials and media (including rags and clothing, soils and groundwater) as hazardous waste, the Agency is establishing exemption criteria for listed hazardous wastes and contaminated media which, if met, would exempt the waste/media from Subtitle C requirements. The Agency performed a number of analyses to assess the potential impact of this exemption mechanism. For these analyses, the Agency reviewed compositional data on approximately 800 wastes and media, including listed waste mixtures, listed treatment residuals, untreated listed wastes, and contaminated soils, groundwater, and certain treatment residuals. The compositional data were used to identify those wastes and media that would be expected to achieve the exemption. Based on these analyses, the Agency found that the wastes and media most likely to meet the criteria are contaminated soils and groundwater, dilute waste mixtures, and treatment residuals. Although, the Agency believes that most "as generated" listed hazardous wastes will not achieve the exemption levels, the Agency is not excluding these wastes from eligibility. Therefore, the Agency is proposing that the following waste categories be eligible for exemption demonstrations:

(1) Hazardous wastes listed in 261.31 and 261.32 (with the exception of certain wastes discussed below).

(2) Commercial chemical products listed in 261.33 that are present on the exemption list (*i.e.*, Appendices [x+1] and [x+2]).

(3) Contaminated materials and media (*i.e.*, groundwater, soils, rags, kiln refractory) that contain one or more hazardous wastes listed in (1) or (2) above.

(4) Wastes that are hazardous because they have been derived from or mixed with wastes in (1) or (2) above.

Eligible wastes and media must be analyzed for hazardous constituents contained in Appendices [x+1] and [x+2], respectively. The remainder of this section discusses alternate exemption mechanisms for certain wastes, as well as various proposed and optional eligibility restrictions for wastes and media (section IV.A) and waste management units (section IV.B).

A. Eligibility

Hazardous Wastes Listed Based Solely on Characteristics

The lists of hazardous wastes include a number of wastes that are listed solely because they exhibit a characteristic. 40 CFR 261.3(a)(2)(iii)) states that such wastes remain hazardous until a mixture of these wastes with solid wastes no longer exhibits any characteristic of hazardous wastes identified in subpart C of 40 CFR part 261.[4] Thus, it is unnecessary to include these wastes, which are listed in Table 1, in the exemption program because of the existing self-implementing exemption process:

TABLE 1.—WASTES LISTED DUE TO CHARACTERISTICS FOR WHICH DE MINIMIS EXEMPTIONS ARE NOT NECESSARY

F003—The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol (I).
K044—Wastewater treatment sludges from the manufacture of explosives (R).
K045—Spent carbon from the treatment of wastewaters containing explosives (R).
K047—Pink/red water from TNT operations (R).
P009—Ammonium picrate (R).
P081—Nitroglycerine (R).
P112—Tetranitromethane (R).
U001—Acetaldehyde (I).
U002—Acetone (I).
U008—Acrylic acid (I).
U031—n-Butyl alcohol (I).
U055—Cumene (I).
U056—Cyclohexane (I).
U057—Cyclohexanone (I).
U092—Dimethyl amine (I).
U096—α,α-Dimethylbenzylhydroperoxide (R).
U110—Dipropylamine (I).
U112—Ethyl acetate (I).
U113—Ethyl acrylate (I).
U117—Ethyl ether (I).
U124—Furan (I).
U125—2-Furancarboxaldehyde (I).
U154—Methanol (I).
U161—Methyl isobutyl ketone (I).
U186—1,3-Pentadiene (I).
U189—Phosphorous sulfide (R).
U213—Tetrahydrofuran (I).
U239—Xylene (I).

Note that a number of the commercial chemical products listed in Table 1 are also constituents on the exemption list (see Appendices [x+1] and [x+2]). The Agency plans to propose (in a separate notice) to modify the basis for listing these commercial chemical products, as well as F003, to include toxicity. Once the basis for listing these wastes is modified, these wastes would no longer be eligible for exemption under 261.3(a)(2)(iii) because they will no longer be listed solely for a characteristic, and instead would be eligible for exemption under today's proposal. Under the ECHO approach, this situation could not occur because hazardous waste identification would be based solely upon 40 CFR 261.3(a)(2)(iii). The Agency requests comments on whether the wastes listed in Table 1 for which exemption levels exist should continue to be eligible for exemption under 261.3(a)(2)(iii) until such time as the basis for listing these wastes is modified.

[4] Such mixing practices are generally considered to be treatment of hazardous wastes requiring RCRA permitting, unless otherwise exempted.

Lack of Toxicity Data and Associated Health-Based Levels for Appendix VII Constituents

The Agency is proposing that certain listed wastes be ineligible for exemption under today's proposal because exemption levels cannot be derived at this time for all of the specific constituents for which the wastes were originally listed in 40 CFR 261.33 or appendix VII of 40 CFR part 261. (See section V, VI, and VII for discussions of selection of exemption constituents, development of health-based levels, and identification of methods and quantitation limits, respectively.) The Agency is proposing that the commercial chemical product wastes listed in Table 2 not be eligible for exemption under today's proposal. However, the Agency is interested in wastes, listed in Table 2, for which there are analytical methods, yet there are no health-based numbers. Specifically, the Agency requests comment on whether these wastes should be eligible for today's proposed exemption if after treatment the constituents are not detectable in the incineration residual.

TABLE 2.—40 CFR 261.33 COMMERCIAL CHEMICAL PRODUCTS THAT ARE NOT ELIGIBLE FOR CBEC EXEMPTION DUE TO LACK OF HEALTH-BASED LEVELS AND/OR ANALYTICAL METHODS

P001	Warfarin, and salts.[1]
P002	1-Acetyl-2-thiourea.[2]
P005	Allyl alcohol.[1]
P006	Aluminum phosphide.[1]
P007	5-(Aminomethyl)-3-isoxazolol.[1]
P008	4-Aminopyridine.[1]
P014	Benzenethiol.[1]
P016	Dichloromethyl ether.[1]
P017	Bromoacetone.[3]
P018	Brucine.[3]
P023	Chloroacetaldehyde.[3]
P026	1-(o-Chlorophenyl) thiourea.[2]
P027	2-Chloropropionitrile.[3]
P034	2-Cyclohexyl-4,6-dinitrophenol.[3]
P040	O,O-Diethyl O-pyrazinyl phosphorothicate.[3]
P041	Diethyl-p-nitrophenyl phosphate.[3]
P042	Epinephrine.[3]
P043	Diisopropyl fluorophosphate.[3]
P045	Thiofanox.[1]
P046	α,α-Dimethylphenethylamine.[2]
P047	4,6-Dinitro-o-cresol.[2]
P049	Dithiobiuret.[3]
P054	Ethyleneimine.[3]

TABLE 2.—40 CFR 261.33 COMMERCIAL CHEMICAL PRODUCTS THAT ARE NOT ELIGIBLE FOR CBEC EXEMPTION DUE TO LACK OF HEALTH-BASED LEVELS AND/OR ANALYTICAL METHODS—Continued

P056	Fluorine.[3]
P057	Fluoroacetamide.[3]
P058	Fluoroacetic acid, Na salt.[3]
P060	Isodrin.[2]
P062	Hexaethyl tetraphosphate.[3]
P064	Methyl isocyanate.[3]
P066	Methomyl.[1]
P067	Aziridine, 2-methyl.[3]
P068	Methyl hydrazine.[3]
P069	2-Methyllactonitrile.[3]
P070	Aldicarb.[1]
P072	α-Napthylthiourea.[3]
P075	Nicotine, & salts.[3]
P076	Nitric oxide.[1]
P077	p-Nitroaniline.[2]
P078	Nitrogen dioxide.[1]
P084	N-Nitrosomethylvinylamine.[3]
P087	Osmium tetraoxide.[1]
P088	Endothall.[1]
P093	Phenylthiourea.[3]
P095	Phosgene.[3]
P096	Phosphine.[1]
P102	Propargyl alcohol.[3]
P105	Sodium azide.[3]
P107	Strontium sulfide.[3]
P111	Tetraethyl pyrophosphate.[3]
P116	Thiosemicarbazide.[3]
P118	Trichloromethanethiol.[3]
U005	2-Acetylaminofluorene.[2]
U006	Acetyl chloride.[3]
U010	Mitomycin C.[3]
U011	Amitrole.[3]
U014	Auramine.[3]
U015	Azaserine.[3]
U016	Benz[c]acridine.[3]
U017	Benzal chloride.[3]
U020	Benzenesulfonyl chloride.[3]
U024	Dichloromethoxyethane.[2]
U026	Chlornaphazin.[3]
U030	4-Bromophenyl phenyl ether.[2]
U033	Carbon oxyfluoride.[3]
U034	Chloral.[1]
U035	Chlorambucil.[3]
U039	p-Chloro-m-cresol.[3]
U042	2-Chloroethyl vinyl ether.[2]
U046	Chloromethyl methyl ether.[1]
U047	beta-Chloronaphthalene.[1]
U049	4-Chloro-o-toluidine, hydrochloride.[2]
U051	Creosote.[3]
U053	Crotonaldehyde.[1]
U058	Cyclophosphamide.[3]
U059	Daunomycin.[3]
U064	Dibenzo(a,i)pyrene.[3]
U071	m-Dichlorobenzene.[2]
U074	1,4-Dichloro-2-butene.[2]
U082	2,6-Dichlorophenol.[3]
U085	1,2:3,4-Diepoxybutane.[3]
U086	N,N'-Diethylhydrazine.[3]
U087	O,O-Diethyl S-methyl dithiophosphate.[3]
U090	Dihydrosafrole.[3]
U092	Dimethyl amine.[2]
U093	p-Dimethylaminoazobenzene.[2]
U097	Dimethylcarbamoyl chloride.[3]
U098	1,1-Dimethylhydrazine.[1]
U099	1,2-Dimethylhydrazine.[1]
U103	Dimethyl sulfate.[3]
U114	Ethylene bis(dithiocarbamic acid), salts and esters.[3]
U115	Ethylene oxide.[1]
U116	Ethylene thiourea.[1]
U126	Glycidylaldehyde.[1]
U133	Hydrazine.[1]
U134	Hydrofluoric acid.[3]
U138	Iodomethane.[2]
U139	Iron dextran.[3]

TABLE 2.—40 CFR 261.33 COMMERCIAL CHEMICAL PRODUCTS THAT ARE NOT ELIGIBLE FOR CBEC EXEMPTION DUE TO LACK OF HEALTH-BASED LEVELS AND/OR ANALYTICAL METHODS—Continued

U141	Isosafrole.[2]
U143	Lasiocarpine.[3]
U147	Maleic anhydride.[1]
U148	Maleic hydrazide.[1]
U149	Malononitrile.[1]
U150	Melphalan.[3]
U153	Methanethiol.[3]
U155	Methapyrilene.[2]
U156	Methyl chlorocarbonate.[1]
U158	4,4'-Methylenebis(2-chloroaniline).[1]
U160	Methyl ethyl ketone peroxide.[3]
U163	Guanidine, N-methyl-N'-nitro-N-nitroso-.[3]
U164	Methylthiouracil.[3]
U166	1,4-Naphthalenedione.[2]
U167	alpha-Naphthylamine.[2]
U170	p-Nitrophenol.[2]
U173	N-Nitrosodiethanolamine.[1]
U176	N-Nitroso-N-ethylurea.[3]
U177	N-Nitroso-N-methylurea.[1]
U178	N-Nitroso-N-methylurethane.[3]
U181	5-Nitro-o-toluidine.[2]
U182	Paraldehyde.[3]
U184	Pentachloroethane.[2]
U187	Phenacetin.[2]
U191	2-Picoline.[2]
U193	1,3-Propane sultone.[3]
U194	1-Propanamine.[3]
U197	p-Benzoquinone.[3]
U200	Reserpine.[1]
U201	Resorcinol.[2]
U202	Saccharin, & salts.[3]
U206	Streptozotocin.[3]
U218	Thioacetamide.[2]
U219	Thiourea.[3]
U222	o-Toluidine hydrochloride.[3]
U223	Toluene diisocyanate.[2]
U236	Trypan blue.[3]
U237	Uracil mustard.[3]
U238	Urethane.[3]
U243	Hexachloropropene.[2]
U244	Thiram.[1]
U248	Warfarin, and salts.[1]

Superscript Key:
[1]—No Analytical Method.
[2]—No Health-based Number.
[3]—Neither an Analytical Method or a Health-based Number.

There are 31 listed hazardous wastes that were listed for certain appendix VII constituents that do not appear on the CBEC exemption list. Table 3 identifies these 31 wastes. For a number of these wastes (F020, F021, F023, F027, F028, K036, K037, K038, K039), the appendix VII entries without exemption levels represent broad classes of toxicants. In some cases, the exemption list contains members of these classes (for example, F023 is listed for trichlorophenoxy esters, ethers, amines, and salts and the exemption list contains 2,4,5-T and Silvex, members of these classes). The Agency is proposing that none of these wastes be eligible for exemption under today's proposal because not all of their appendix VII constituents are included in the exemption list. The Agency is soliciting comments that would either reaffirm this approach or suggest an alternative approach that would allow these wastes to remain eligible.

It is the Agency's goal for all listed wastes to be eligible for either CBEC or ECHO. The Agency will use Table 3 as a general guide to set priorities in this effort. For those constituents which have HBLs but lack verifiable test methods, EPA first will develop appropriate tests. After that effort, for those constituents which have SW–846 test methods but lack health-based levels, the Agency will develop health-based levels. Finally, the Agency will develop both test methods and health-based levels for those remaining constituents. The Agency asks for comments on this approach. The Agency also requests any comments, data, or proposed test methods for the constituents listed in Table 3.

Phased Approach

The Agency is also soliciting comments on the implementation of today's proposed exemption in phases. Under a phased approach, the Agency would restrict exemption eligibility initially only to certain categories of wastes, providing the Agency with an implementation schedule that (1) allows the Regions and States to adopt the program more gradually, and (2) would provide sufficient flexibility to help ensure successful implementation. The universe of hazardous waste generators, treatment, storage and disposal facilities is approximately 100,000 facilities. The universe of treatment, storage and disposal facilities is comprised of about 5,000 facilities. The Agency is requesting comments on two options to limit exemption eligibility.

Under the first option, eligibility would initially be limited to treated wastes. The Agency believes that treated wastes are good candidates for the first phase of a phased approach because (1) they are the most likely wastes to have constituent concentrations that meet today's proposed exemption levels, (2) facilities generating treated wastes are generally very familiar with the hazardous waste handling requirements and thus may be able to develop complete demonstration packages more readily, and (3) the Agency is well acquainted with the operating practices at these facilities due to on-going permitting and inspection activities. Commenters supporting this option should address possible definitions of "treated waste".

The second phasing option would limit initial eligibility to facilities at which the Agency/States currently have oversight through the corrective action and permitting programs. Wastes

generated at these types of facilities would be good candidates for the initial phase of a phased approach for the same reasons listed above for treated wastes, but may represent a smaller universe of potential participants and facilities where the Agency is more familiar with actual waste or media characterization data. This option could also include wastes and media at CERCLA sites.

A gradual phase-in of the program balances the burden to the regulated community of having their low concentration wastes subject to Subtitle C control against the administrative burden to the Agency and authorized States of implementation and enforcement of the new exemption program. The budgetary commitments and manpower demands of implementing this exemption program for the entire regulated community would require direct tradeoffs from other elements of the program. In addition, a shortage of properly trained technical enforcement personnel necessary to implement this new program immediately is an Agency concern. Because the exemption program proposed today would be generally self-implementing, the Agency recognizes that it will be necessary to place a high priority upon compliance monitoring and enforcement. By phasing in this program, the Agency would be able to develop inspection guidance based upon the initial implementation experience under either of the phasing options. A phased approach would provide additional time and experience to develop and present training for Regional EPA and State inspectors, improving their abilities to make sound technical reviews of exemption demonstrations.

The Agency is proposing several approaches for implementation in Section XI of today's notice. One approach would require that facilities applying for exemptions must perform testing of the wastes, notify the appropriate agency and provide test results on request, and maintain records in order to qualify for the exemption. A phased approach would give the Agency experience in reviewing the sampling and analysis plans and testing records. During the initial implementation phase, the Agency would be able to evaluate the need for any special regulatory requirements to deal with unique problems associated with particular wastes. Using this experience, the Agency can decide whether revision of the exemption criteria is necessary. It will also provide the Agency the time to assess generally any environmental and administrative issues that arise during implementation of the exemption program.

TABLE 3.—INELIGIBLE LISTED HAZARDOUS WASTES WITH APPENDIX VII CONSTITUENTS LACKING CBEC EXEMPTION LEVELS

List Nos.	Appendix VII constituents without exemption levels	Appendix VII constituents with exemption levels
F020	tetrachlorophenoxy esters, ethers, amines, salts, acids (M).	tetrachlorodibenzo-p-dioxins and -furans, pentachlorodibenzo-p-dioxins and -furans, trichlorophenols, tetrachlorophenols.
F021	pentachlorophenoxy acids, esters, ethers, amines, salts (M).	pentachlorophenol, pentachlorodibenzo-p-dioxins and -furans, hexachlorodibenzo-p-dioxins and -furans.
F023	tri- and tetrachlorophenoxy esters, ethers, amines, salts (M).	tetrachlorodibenzo-p-dioxins and -furans, pentachlorodibenzo-p-dioxins and -furans, trichlorophenols, tetrachlorophenols, trichlorophenoxy acids.
F024	pentachloroethane (H), hexachlorocyclohexane (H), m-dichlorobenzene (H).	allyl chloride, chloromethane, 2-chloro-1,3-butadiene, dichloromethane, trichloromethane, carbon tetrachloride, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethene, 1,1-dichloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, hexachloroethane, dichloropropane, dichloropropene, hexachloro-1,3-butadiene, hexachlorocyclobutadiene, benzene, chlorobenzene, dichlorobenzenes, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.
F025	pentachloroethane (H) m-dichlorobenzene (H)	allyl chloride, chloromethane, 2-chloro-1,3-butadiene, dichloromethane, trichloromethane, carbon tetrachloride, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethene, 1,1-dichloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, hexachloroethane, dichloropropane, dichloropropene, hexachloro-1,3-butadiene, hexachlorocyclobutadiene, benzene, chlorobenzene, dichlorobenzenes, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.
F027, F028	tri-, tetra-, and pentachlorophenoxy acids, esters, ethers, amines, salts (M).	tetra-, penta-, and hexachlorodibenzo-p-dioxins and -furans, tri-, tetra- and pentachlorophenols, trichlorophenoxy acids.
K001	p-chloro-m-cresol (H) Acenaphthylene (H)	pentachlorophenol, phenol, 2-chlorophenol, 2,4-dimethylphenol, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, creosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benz(a)anthracene, dibenz(a)anthracene.
K009	paraldehyde (B), formaldehyde (Q)	formic acid, chloroform, methylene chloride, methyl chloride.
K010	paraldehyde (B), chloroacetaldehyde (B), formaldehyde (B).	formic acid, chloroform, methylene chloride, methyl chloride.
K017	bis(chloromethyl) ether (B), dichloropropanols (M-B)	epichlorohydrin, 1,2,3-trichloropropane, bis(2-chloroethyl) ether.
K019, K020	vinylidene chloride (B)	ethylene dichloride, 1,1,1-tri-chloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride.
K023	maleic anhydride (Q)	phthalic anhydride.
K024	1,4-naphthoquinone (H)	phthalic anhydride.
K026	paraldehyde (B), 2-picoline (H)	pyridine.
K027	toluene diisocyanate (H)	2,4-toluene diamine.
K036, K037	phosphorodithioic acid and acid esters (M)	toluene.
K039	phosphorodithioic acid and acid esters (M)	
K038, K040	phosphorodithioic acid, acid esters (M), formaldehyde (Q)	phorate.
K043	2,6-dichlorophenol (H)	2,4-dichlorophenol, 2,4,6-trichlorophenol.
K093, K099	maleic anhydride (Q)	phthalic anhydride.
K116	phosgene (B)	carbon tetrachloride, tetrachloroethylene, chloroform.
K123, K124, K125, K126	ethylene thiourea (B)	
K131	dimethyl sulfate (B)	methyl bromide.

(Q) Lacks SW-846 method.
(H) Lacks health-based levels.
(B) Lacks both SW-846 method and health-based levels.
(M) Indicates class or mixture.

Table 4 presents the wastes listed in § 261.33 which the Agency is proposing to be eligible for exemption because they are currently represented in larger analytical classes on the exemption list. For example, P010 wastes (arsenic acid) are represented by the element arsenic on the exemption list.

TABLE 4.—40 CFR 261.33 Commercial Chemical Products That Are Eligible for CBEC Exemption Because They Are Represented by Other Constituents on the Exemption List

P010	Arsenic acid (as As).
P011	Arsenic oxide (as As).
P012	Arsenic trioxide (as As).
P013	Barium cyanide (as Ba, CN).
P021	Calcium cyanide (as CN).
P029	Copper cyanide (as CN).
P031	Cyanogen (as CN).
P033	Cyanogen chloride (as CN).
P036	Dichlorophenylarsine (as As).
P038	Diethylarsine (as As).
P063	Hydrogen cyanide (as CN).
P065	Mercury fulminate (as Hg).
P073	Nickel carbonyl (as Ni).
P074	Nickel cyanide (as Ni, CN).
P092	Phenylmercury acetate (as Hg).
P098	Potassium cyanide (as CN).
P099	Potassium silver cyanide (as Ag, CN).
P101	Ethyl cyanide (as CN).
P103	Selenourea (as Se).
P104	Silver cyanide (as Ag, CN).
P106	Sodium cyanide (as CN).
P113	Thallium oxide (as Tl).
P114	Thallium selenite (as Tl, Se).
P115	Thallium sulfate (as Tl).
P119	Vanadic acid, ammonium salt (as V).
P120	Vanadium pentoxide (as V).
P121	Zinc cyanide (as CN, Zn).
U032	Calcium chromate (as Cr).
U136	Arsenic acid, dimethyl (as As).
U144	Lead acetate (as Pb).
U145	Lead phosphate (as Pb).
U146	Lead, bis(aceto-O) tetrahydroxytri- (as Pb).
U196	Selenium dioxide (as Se).
U204	Selenious acid/Selenium dioxide (as Se).
U205	Selenium sulfide (as Se).
U214	Thallium acetate (as Tl).
U215	Thallium carbonate (as Tl).
U216	Thallium chloride (as Tl).
U217	Thallium nitrate (as Tl).
U246	Cyanogen bromide (as CN).

The Agency evaluated the constituents on Table 4 and notes that health-based levels exist for a number of these compounds. In most cases, these health-based levels are higher than the health-based levels for the corresponding parent metals. In two cases, however, the health-based level was significantly lower than the parent metal, *i.e.*, for Hazardous Waste Numbers P110, tetraethyl lead and U249/P122, zinc phosphide. Due to the lack of SW–846 analytical methods for these types of compounds and the significant differences in health-based levels for lead, tetraethyl lead, zinc, and zinc phosphide, the Agency is proposing that P110, U249, and P122 wastes be ineligible for exemption under today's proposal. Several other compounds on Table 4 have health-based levels that are approximately one order of magnitude, or less, lower than the health-based levels for the corresponding parent metals: P029—Copper cyanide; U204—Selenious acid; and P114—Thallium selenite (see the docket for this notice for further information). The Agency is proposing to allow exemption of these wastes due to the relatively small differences between the health-based levels of concern and request comment on this proposal.

Limitations of SW–846 Methods for Appendix VII Constituents

The Agency also requests comment on whether certain listed wastes should be ineligible for exemption under today's proposal because of limitations associated with the analytical quantitation for some of their appendix VII constituents. Table 5 lists those appendix VII constituents that cannot be quantitated readily at the health-based exemption level assuming a DAF of 1 (option 3). While the majority of these wastes are already proposed to be ineligible for exemption because health-based levels are not available for all of their appendix VII constituents (see Table 3), the Agency requests comments on whether they should also be ineligible because of expected analytic challenges in quantitating certain appendix VII constituents at their health-based exemption levels.

Specifically, the Agency is most concerned with the exemption eligibility basis for those wastes that have appendix VII constituents whose exemption levels are more than two orders of magnitude lower than their respective quantitation limits (Qls) (see Group I in Table 5). The Agency is less concerned with the Group II constituents because analysts can frequently lower detection limits by one order of magnitude by carefully fine-tuning the analytical equipment.

TABLE 5.—APPENDIX VII CONSTITUENTS WITH QUANTITATION LIMITS (QLS) THAT EXCEED THEIR HEALTH-BASED LEVELS (HBLS) BY MORE THAN ONE ORDER OF MAGNITUDE

	Appendix VII basis
Group I: QL > 100 × HBL	
Acrylamide	K014
2,4=Dinitrotoluene	K025, K111
2=Nitropropane	F005
2,4=Toluenediamine	K027*, K112, K113, K114, K115
Group II: 10 × HBL < QL < 100 × HBL	
Benzotrichloride	K015
Bis(2-chloroethyl) ether	K017*
1,3=Dichloropropene	F024*
Epichlorohydrin	K017*
Hexachloro-1,3-butadiene	K016, K018, K030, F024*
Pentachlorophenol	F021*, F027*, F028*, K001
Phenylene diamine	K103, K104, K083
o-Toluidine	K112, K113, K114
p-Toluidine	K112, K113, K114

* These wastes are proposed to be ineligible for exemption due to the lack of CBEC levels for some of the appendix VII constituents for which they were listed.

The Agency is requesting comments on whether it is necessary to list as ineligible those wastes with appendix VII constituents that cannot be routinely analyzed using SW–846 methods within two orders of magnitude of the exemption level. The Agency believes that most wastes that may contain these constituents of concern will also contain constituents with analytically achievable exemption levels which may act as adequate surrogates. In addition, generators of these wastes are experienced in their analyses and may be able to achieve the necessary quantitation limits readily, although not by SW–846 methods. The Agency also notes that as the state of the art in analytical techniques is advanced, the Agency expects to lower the Qls listed in Appendices [x+1] and [x+2] for these constituents.

Dioxin Wastes

The Agency also requests comments on whether the "dioxin listings" (that is, F020–23 and F026–28) should be eligible for exemption under today's proposal or whether instead they should only be exempted (when appropriate) through the delisting process. As discussed earlier, four of these wastes are currently proposed to be ineligible for exemption because not all of their

appendix VII constituents are included in the exemption list. Six of the seven dioxin listings are listed as acutely toxic and are currently subject to more stringent management controls under 40 CFR 264 and 265 than other types of listed hazardous wastes. In addition, as can be seen from Table 3, there are a number of appendix VII constituents for these wastes that are identified as broad chemical classes (*e.g.* pentachlorophenoxy acids, amines, esters, ethers, salts) and, as such, are not readily amenable to analysis or the development of health-based levels. Reviewing exemption demonstrations for these wastes through the delisting process may provide added controls which are appropriate for these wastes.

In addition, as described in section II.F.2, the Agency is requesting comments on whether there is a need for a redesignation mechanism for dioxin wastes (to reclassify wastes with low dioxin levels from acutely toxic to hazardous) through either the exemption process proposed today or the listing mechanisms.

Oil Content

The Agency is soliciting comments on whether additional restrictions for eligibility, such as criteria based on a percent oil content, are needed. Oily matrices present analytical difficulties which generally prevent analysts, using prescribed methods, from achieving necessary quantitation levels. In addition, the efficiency of the Agency's leaching procedures can be reduced for oily wastes. By specifying a maximum allowable percent oil content as an exemption eligibility criteria, facilities could use this level as a simple screening test to predict whether it is analytically feasible to attempt an exemption demonstration. The Agency envisions that a maximum allowable percent oil content would be on the order of 1.0 percent total oil and grease. (In the delisting program, this is the level at which the Oily Waste Extraction procedure is required because 1% oil and grease was estimated to be the amount which could coat a solid waste and temporarily inhibit leaching measurements in the EP test.) The Agency requests comments on whether this criteria should be included in the exemption criteria proposed today and on the appropriateness of the 1.0 percent level, as well as on similar wastes that should not be eligible for exemption under today's proposal and that can be screened using similar criteria. The Agency requests comment on the volume of wastes which may be excluded if oily wastes above 1% are deemed ineligible for these exemptions. In addition, the Agency asks for comment on new leachate tests or modifications to the existing TCLP to simulate leaching from oily wastes.

Leachate From a Subtitle D Landfill Containing Newly Listed Wastes

Several parties have raised to EPA the case of leachate from a subtitle D landfill which receives solid wastes that subsequently become listed hazardous wastes. Under the current regulations, the leachate would become listed hazardous waste due to the derived-from rule. The options presented in today's notice may address this situation by setting concentration-based exemption levels for toxic constituents that may be in the leachate. However, in their comments to the Agency, Browning-Ferris Industries (BFI) expressed concern regarding the uncertainty of industrial wastes which the Agency may list in the future and the retroactivity of the derived-from rule on leachate generated from previously unlisted wastes and on gas condensate (see BFI comments, March 18, 1992). BFI believed that retroactivity "penalizes" facilities which manage leachate from previously unlisted wastes and may be a disincentive for environmentally responsible activities such as thorough recordkeeeping, active leachate management, and installation of a gas recovery system.

EPA asks for additional information regarding what actual operational problems arise in the management of this leachate. The Agency would like information as to whether the generic concentrations proposed in this regulation would exempt low risk leachate and gas condensate is such situations. Also, the Agency is aware that at some landfills, leachate from sumps which are part of the leachate collection system may be collected by trucks and transported to on-site waste water treatment systems. EPA asks for comment on the appropriateness of extending the RCRA waste water treatment in tanks exemption to cover this situation, even though the sumps are not "hard-piped" to the on-site waste water treatment system.

Accidental Spills

There are a number of situations resulting from the mixture rule which causes frustration to the regulated community. One is spills of listed hazardous waste. When an accidental spill occurs of listed hazardous materials, there is a danger that everything the material contacts automatically becomes a hazardous waste, too. For example, a spill of a listed material into a wastewater treatment system can cause all sludges in that system to become subject to hazardous waste management requirements. The unintentional spill causes waste code carry-through problems. EPA requests comment on whether these types of spills are adequately addressed under the *de minimis* spill exemption at 40 CFR 261.3(a)(2)(iv)(D) or if other solutions are necessary and what these solutions are.

EPA recognizes that these are mostly accidental spills and requests comments from the public on what approaches could be used for dealing with such events. Are the options described in today's Notice suitable for dealing with spills? Another concern that has been raised is whether or not the testing requirements of this proposal are suitable for these situations. The Agency seeks comments on reasons why they may or may not be suitable.

Very Small Volume Wastes

Similarly, frustration in the regulated community is caused by the mixture rule as it pertaining to very small volume wastes such as boiler blowdown. Blowdown volumes may be very small in relation to the volume of process wastewaters (*i.e.*, boiler blowdown of 100 gallons mixed with one million gallons of process wastewater) yet because the two wastestreams are mixed, the mixture becomes a hazardous waste. Where a very small wastestream carrying a hazardous waste code mixes with a very large wastestream without such a code, it is unlikely that the resulting wastestream or its sludges will be hazardous because of the listed wastes; however, the mixture might be above CBEC levels because of constituents in the unlisted wastewaters. Further, EPA notes that periodic testing requirements may not be well-suited to the situation of an incidental spill causing a temporary spike in values. The Agency solicits comment on whether or not today's Notice contains possible solutions to this situation or whether some special solution to it is available.

Industrial Wipes

The Agency requests comment on industrial wipes which have been contaminated with a listed solvent or listed solvent mixture. Under the current regulatory framework, these contaminated wipes may be regulated as the listed hazardous wastes. Under several of the options proposed today, these generators would still need to test the wipes or use knowledge to determine if these contaminated wipes were exempted. Data, which appears in

the record for today's proposal (see comments by Sidley and Austin, P.C. on behalf of Kimberly-Clark Corporation, April 2, 1992), indicate that levels of toxic organic constituents in wipes contaminated with some of the solvents regulated by the F001–F005 listings appear to be extremely low. The Agency requests comment on whether these wipes should continue to be regulated by the mixture rule as listed hazardous wastes.

Specifically, EPA requests comment on an alternative approach for addressing wipes contaminated with a solvent regulated in the F001–F005 listings, which is a specific rule that states if these materials are not visibly contaminated, then the F001—F005 listings would apply as characteristics rather than as listings. Very simple criteria which are easily implemented at the point of use, such as spent wipes which do not drip solvent even when wrung out, could be the basis for determining "visibly contaminated". Under this approach a generator may use knowledge, such as the sort suggested in the Kimberly-Clark comments, to determine whether wipes that are not "visibly contaminated", at the point of use, would contain leachable quantities of the solvents that are regulated under by the F001–F005 listing at levels greater than exemption criteria. EPA believes that this approach might be a practical solution to an issue that has been problematic for years. The simple field test to limit this modification of the listings, and the operation of the listings as a narrowly focused characteristic, would act as a safeguard which protects the environment while recognizing that wipes are widely used and recognizing evidence that concentrations of hazardous constituents in the wipes can be quite low.

B. Waste Management Units

The Agency is proposing that CBEC or ECHO wastes are exempt from the time of a proper notification and that notifications are not retroactive (see Section XI of this preamble). Units that have been managing hazardous wastes, including CBEC or ECHO wastes, will not automatically become exempt. Instead, such a unit will be expected to go through closure procedures to show that no environmental damage was done by past management of wastes. In many cases, hazardous waste management units may have been used to manage hazardous wastes other than the exempted wastes and EPA is concerned that a self-implementing rule is not the right procedure to evaluate historical waste management practices.

The Agency has evaluated a number of delisting petitions where the waste met the delisting criteria, but the facility was subject to corrective action due to contamination and/or existing ground-water contamination exceeding the health-based levels used in delisting evaluations. In these cases, the contamination was greater than would be expected based on an evaluation of the waste alone, indicating that perhaps the more hazardous constituents had preferentially migrated into underlying aquifers, or that the petitioned waste had been treated in the unit to reduce hazardous constituent concentrations, or that historical waste management practices had impaired the quality of the underlying aquifer.

The Agency believes that these units should continue to be subject to applicable subtitle C requirements including closure standards (see further discussion under section XIII E). The Agency believes that the evaluation of the impact of a unit on the environment, particularly the impact of land disposal units on groundwater and the determination of whether the unit ever managed non-CBEC hazardous wastes, is more complicated than can be accounted for in this type of self-implementing program. The Agency is particularly concerned that units containing wastes that meet today's exemption criteria and have ground-water contamination should not be exempted from subtitle C control. The Agency requests comment on this approach and alternative approaches to regulating units which have managed exempt wastes.

C. Existing Regulatory Exemptions From the Mixture and Derived-From Rules

EPA notes that there are currently numerous exemptions from the hazardous waste identification system, particularly the mixture and derived-from rules, for certain types of wastes or wastes with certain constituent concentrations. See *e.g.* 40 CFR 261.3(a)(2)(iv) (A) through (E). In light of today's proposal, EPA asks for comments on whether these exemptions continue to be warranted. EPA requests comment on whether these exemptions should be retained and the rationale for retaining them.

V. Selection of Constituents of Concern

The Agency is proposing exemption levels for 200 hazardous constituents. To develop this list of constituents, EPA first compiled a master list that included all hazardous constituents identified in 40 CFR part 261, appendices VII and VIII, and/or part 264, appendix IX. EPA then developed exemption concentrations for all of the compounds on the master list for which SW–846 analytical methods and health-based levels are available. The resulting list is being proposed as the "exemption constituent list" (see appendices [x+1] and [x+2] of the proposed rule).

The background on the selection of compounds for the exemption list is presented below and further discussed in supporting documentation for this proposal included in the public docket.

This extensive exemption list was developed because the Agency believes that it is necessary to require facilities to analyze their wastes for a broad range of constituents in a self-implemented exemption demonstration. First, it is not feasible in a self-implemented program to predict consistently which specific hazardous constituents will be present in a given waste because process-specific characteristics, feedstock contaminants, waste mixing practices, and degradation will cause the constituent profiles to vary. Secondly, by establishing a set list of exemption constituents, the Agency will ensure that all exempted wastes have been evaluated on a consistent basis. Third, this approach is in keeping with section 3001(f) of HSWA which directs the Agency to examine other factors (including other constituents) in addition to those factors for which a waste was originally listed as hazardous when evaluating delisting petitions. Finally, a set list of constituents will minimize the potential for disputes over which constituents of concern need to be identified in particular wastes. As will be discussed further in section XII.B, the Agency is soliciting comments on alternatives to reduce the list of constituents for which testing is required after the initial demonstration (*i.e.*, in subsequent recertification demonstrations).

A. Universe of Hazardous Constituents

The master list of potential exemption constituents was compiled from the primary lists of constituents used by EPA to regulate hazardous and solid waste activities under RCRA. These lists included: (1) The list of hazardous constituents found in 40 CFR part 261, appendix VIII (hereafter referred to as appendix VIII), (2) the list of hazardous constituents found in 40 CFR part 261, appendix VII (hereafter referred to as appendix VII), and (3) the list of constituents for which ground-water monitoring data are required at hazardous waste land disposal units found in 40 CFR part 264, appendix IX (hereafter referred to as appendix IX). The Agency believes that these sources

encompass most of the known hazardous constituents of concern. The Agency, however, requests comments on whether additional constituents should be added to this list. (The master list and the Agency's determination of which constituents should be used in the exemption criteria are available for review in the public docket to this rule.)

B. Development of the Exemption Constituent List

The Agency carefully evaluated the master list to determine which constituents should be included in the exemption constituent list. This Section describes the steps that were taken in the development of the exemption constituent list.

Identification and Deletion of Classes and Mixtures

As a first step, chemical classes and mixtures were deleted from the master list because it is not generally possible to develop analytical quantitation limits or health-based levels for these groups of constituents. Instead, the Agency verified that specific compounds from each of these classes and mixtures were present on the master list. Examples of these groups include chloroethers, chlorofluorocarbons, and phenolic compounds. The full list of 33 chemical classes and mixtures that were deleted from the master list and the constituents on the exemption list which were used as representatives of these groups are available in the docket.

Deletion of Analytically Redundant Constituents

The Agency also eliminated constituents from the master list that are identified analytically as metallic or inorganic species. For example, several inorganic salts of chromium are listed in Appendices VII, VIII, and IX. Generators of wastes containing these salts analyze/determine the elemental chromium content rather than the metallic species for the purposes of compliance with the Toxicity Characteristic. This approach will continue to be used in this proposal. The metallic compounds deleted from the master list are identified in the background document.

Availability of Health-Based Levels

As will be discussed further in Section VII, the Agency evaluated the existing toxicity information for the candidate master list constituents to determine whether sufficient data exist to establish a health-based level. Those constituents for which sufficient data did not exist were not included on the exemption list. The Agency then prioritized (based on prevalence in wastes and media) for further study those constituents for which health-based levels could not be derived. The prevalence analysis is available in the background document for today's notice. At such time as health-based levels can be derived, the Agency may propose to add these constituents to the exemption list (as well as to Appendix VIII where appropriate):

Acenaphthylene+	Malononitrile*
Anthracene+	2-Methyllactonitrile+
Bis(2-chloroethoxy)-methane*+	4-Nitrophenol*
Brucine	Propargyl alcohol
2-Chloronaphthalene	*Sodium fluoracetate
Crotonaldehyde	Thiophenol
1,3-Dichloropropanol*	1,2,3-Trichlorobenzene+
2,3-Dichloropropanol	Trichloromethanethiol*
2-Fluoroacetamide*	m-Xylene+
	p-Xylene+

+Indicates that constituent is not currently listed on Appendix VII.

*These compounds were tested by manufacturers. The results were submitted to EPA and are currently being evaluated (TSCA Section IV Test Rule for OSW Chemicals, June 15, 1988, 53 FR 22301).

The Agency also solicits toxicity data from the public to support the levels proposed today, as well as additional data for constituents that are not currently on the exemption list. Data on environmental and health effects of a constituent should, when possible, follow the toxicity testing guidelines of 40 CFR 797 and 798. (See 50 FR 39252, September 27, 1985, Toxic Substances Control Act Test Guidelines.)

Availability of Analytical Methods

The Agency then reviewed the availability of analytical methods for the quantitation of candidate constituents in solids and aqueous media. The Agency has deleted all constituents from the exemption list which do not yet have SW–846 analytical methods. As methods are developed, the Agency may propose to add these compounds to the exemption list. The Agency requests comments on this approach or others (such as mass balance demonstrations) to address compounds lacking analytical methods.

Consideration of Chemically Unstable Constituents

The Agency considered removing chemically unstable constituents from the master list on the basis that, due to chemical degradation or transformation, such constituents actually may not be found in wastes and the environment. Several problems, however, were created by this approach. Chemical instability, such as hydrolysis, dissociation, reactivity, etc., is highly variable under various environmental conditions. In addition, the degradation or transformation products of certain hazardous constituents may be more or less toxic than the original compounds. Due to this variability and the difficulties associated with predicting the degree of degradation or the rates of competing transformation mechanisms which may occur in the environment, the Agency is proposing an approach which assumes that any degradation or transformation that may occur will have already occurred by the time that the waste or medium is characterized. Thus, the exemption criteria includes a number of constituents which are known to be unstable under certain conditions (acrolein, benzotrichloride, epichlorohydrin, methyl methacrylate, phthalic anhydride, tribromomethane), as well as many known toxic degradation and transformation products. The Agency believes that this is a reasonable approach which, while it may underestimate hazard for those few constituents that can transform into more toxic products, is conservative for most constituents. The Agency specifically requests comment on this approach.

The Agency does not believe that this will be overly burdensome to generators who choose to make an exemption demonstration because the analytical methods listed in appendices [x+1] and [x+2] for the analysis of these constituents are already necessary to analyze for other exemption constituents.

Modifications to 40 CFR 261, Appendix VIII

As a result of the development of the exemption list, the Agency has identified a number of constituents which should be added to appendix VIII of part 261. This appendix is the list of hazardous constituents which serve as the basis for hazardous waste listing determinations. Section XII provides additional details regarding the constituents proposed for addition to this appendix.

C. Evaluation of Constituents Omitted From Exemption List

While the Agency is proposing a subset of the master list of hazardous constituents as the exemption list, this does not mean that any omitted constituents are not hazardous. Omitted constituents may not be toxic but may be hazardous due to ignitability, reactivity, or corrosivity, and accordingly will be regulated when present in a waste at levels which trigger the respective hazardous waste characteristics. Other omitted constituents may be toxic, but currently available data does not allow for the establishment of health-based levels. Similarly, other constituents may be hazardous but current analytical state-of-the-art techniques do not allow for their detection in potentially exempted waste or media. As new health effects data and analytical techniques are

developed, the Agency may propose to add these constituents to the exemption list.

The Agency is most concerned with the appendix VII constituents that are not included on the exemption list. Some of these constituents were omitted for lack of health-based data or appropriate analytical methods. (See section IV.A) These constituents are among the Agency's first priorities for the development of health-based numbers and are listed below:

Appendix VII Constituents With No SW–846 Analytical Methods

Bis(2-chloromethyl)ether
Formaldehyde (in soils)
Maleic anhydride

Appendix VII Constituents With No HBNs

Acenaphthylene
p-Chloro-m-cresol
1,3-Dichlorobenzene
2,6-Dichlorophenol
Hexachlorocyclohexane
1,4-Naphthoquinone
Pentachloroethane
2-Picoline
Toluene diisocyanate
Vinylidene Chloride

Appendix VII Constituents With No HBN or SW–846 Analytical Methods

Chloroacetaldehyde
Paraldehyde
Phosgene

VI. Health-Based Levels

For each constituent on the master list, the Agency evaluated the existing toxicity information to determine whether there were sufficient data to establish a health-based level. For these toxicants, the data were evaluated either by the Agency's CRAVE (Carcinogen Risk Assessment Verification Endeavor) Workgroup, Carcinogen Assessment Group (CAG), Reference Dose (RfD) Workgroup, or Environmental Criteria Assessment Office (ECAO–Cincinnati). This approach is consistent with the approach used in the Agency's other risk-based RCRA programs such as the Toxicity Characteristic, delisting petition evaluations, closure, and corrective action, as well as the CERCLA program. The background documents for this proposal are available in the public docket and provide details on the basis for the health-based levels for each constituent.

A. Health Effects

The Agency evaluated two main types of health effects when establishing the exemption levels: systemic toxicity and carcinogenicity. The Agency's approach to assessing the risks associated with these two pathways differ because different mechanisms of action are thought to be involved in the two cases. In the case of carcinogens, the Agency assumes that a small number of molecular events can evoke changes in a single cell that can lead to uncontrolled cellular proliferation. This mechanism for carcinogenesis is referred to as "non-threshold", because there is essentially no level of exposure for such a chemical that does not pose a small, but finite, possibility of generating a carcinogenic response. In the case of systemic toxicity, compensating and adaptive (including organic homeostatic) cellular mechanisms exist that must be overcome before the toxic endpoint is reached. For example, there could be a large number of cells performing the same or similar function whose population must be significantly depleted before the effect is seen. The "threshold hypothesis" is based on the theory that a range of exposures from zero to some finite value can be tolerated by the organism with essentially no chance of expression of the toxic effect.

For both carcinogens and non-carcinogens, the Agency is proposing to use any available Maximum Contaminant Levels (MCLs) proposed or promulgated under the Safe Drinking Water Act (SDWA) of 1974, as amended in 1986, as the health-based levels for exposure to liquids or leachates. In general, MCLs for non-carcinogens are derived from the Reference Doses (RfDs), while MCLs for most carcinogens are set as close to zero as technically feasible; this normally corresponds to risk levels that range from 10^{-4} to 10^{-6}. (Note that, although the derivation of MCLs considers factors in addition to health effects, it also considers other routes of exposure. The Agency's policy has been to use MCLs, when available, in other similar concentration-based programs, including delisting, clean closure, and corrective action.) For those constituents which do not yet have MCLs or proposed MCLs, the Agency is proposing to use oral reference doses (RfDs) for non-carcinogens and oral Risk Specific Doses (RSDs) for carcinogens as described further below. However, if new MCLs are proposed or finalized under the SDWA prior to the promulgation of today's rule, the Agency proposes to substitute the new MCLs for the RfDs, RSDs, and proposed MCLs presented in today's notice. The Agency requests comments on this proposed approach to incorporating proposed and finalized MCLs in the final exemption rule.

1. Non-Carcinogens

The Agency proposes to use oral RfDs as the basis for: (1) The leachate exemption levels for those non-carcinogenic constituents that do not have proposed or promulgated MCLs, and (2) the contaminated soil exemption levels for all non-carcinogens (MCLs do not apply to soils). An RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to a substance for the human population (including sensitive subgroups) which appears to be without an appreciable risk of deleterious effects during a lifetime. For brief periods and for small excursions above the RfD, adverse effects are unlikely to occur in most of the population. However, as the frequency of exposures exceeding the RfD increases, and as the magnitude and duration of exposure above the RfD increases, the probability that adverse effects may be observed also increases.

The method for estimating the RfD for non-carcinogenic end-points was described in the proposed rule for the Toxicity Characteristic (see 51 FR 21648, June 13, 1986). In summary, the approach used to derive an RfD is to identify the highest test dose of a constituent associated with no effects or effects that are not considered adverse in an appropriate animal bioassay test. These experimental no-observed-adverse-effect-levels (NOAELs) or no-observed-effect-levels (NOELs) are considered to be an estimate of the animal population's physiological threshold for adverse effects. The RfD is derived by dividing the NOAEL or other toxicity benchmark by suitable scaling or uncertainty and modifying factors. In the event that an appropriate NOAEL or NOEL is not available, the lowest-observed-adverse-effect level (LOAEL) may be used with additional scaling factors.

It is important to note that information on exposure levels in the environment (*e.g.*, background levels) are not considered in the development of an RfD. Rather, the oral RfD reflects the total theoretical permissible daily human exposure from all ingestion sources, including water and food. RfDs have been calculated for many, but not all, of the non-carcinogenic constituents for which the Agency is establishing exemption levels.

The Agency prefers to use only RfDs that have been evaluated and verified by the RfD Workgroup as the basis for setting regulatory levels. However, for some compounds, the Agency has not yet completed its verification process; thus, RfDs under development are being

used for the purpose of this proposal for those compounds. If the final verified RfDs differ from the RfDs under development proposed in today's notice, the Agency will adopt the new (*i.e.* verified) values for the final rule after noticing the data in the **Federal Register.**

2. Carcinogens

The Agency proposes to use the oral Risk Specific Doses (RSDs) as the bases for: (1) Leachate exemption levels for carcinogenic constituents for which MCLs have not been promulgated or proposed, and (2) soil exemption levels for carcinogenic constituents (MCLs do not apply to soils/solids). The method for estimating the RSD for carcinogenic end-points was described in the proposed rule for the Toxicity Characteristic (see 51 FR 21648, June 13, 1986).

In summary, the RSD is an upper-bound estimate of the average daily dose of a carcinogenic constituent which corresponds to a specified excess cancer risk for lifetime exposure. The upper limit of the dose can be calculated from the slope of a "dose-response" curve. The dose-response curve is determined by a model that extrapolates from human epidemiological and/or animal bioassay data to a dose range where there are no experimental data. The upper limit of the dose calculated from the slope gives rise to a given risk level. The RSD corresponds to this limit when a level of risk is specified.

EPA's Carcinogen Assessment Group (GAG) and CRAVE Workgroup have estimated the carcinogenic potency (*i.e.*, the slope of the "dose-response" curve) for humans exposed to low dose levels of carcinogens in the environment. These slope factors indicate the upper-bound confidence limit estimate of excess cancer risk for individuals experiencing a given exposure over a 70-year lifetime. In practice, a given dose multiplied by the slope factor gives an upper estimate of the lifetime risk to an individual of developing cancer. By specifying a level of lifetime risk (no matter how small), one can also estimate the corresponding dose using the slope factor.

To arrive at an RSD for a carcinogen, a risk level must be specified. EPA proposes to specify the risk level of concern on a weight-of-evidence basis, as described below. EPA promulgated Guidelines for Carcinogen Risk Assessment on September 24, 1986 (51 FR 33992), which defined a scheme to characterize substances based on experimental data and the kinds of responses induced by a suspect carcinogen. These guidelines specify the following five classifications:

Group A—Human carcinogen (sufficient evidence from epidemiologic studies)
Group B—Probable human carcinogen
Group B_1—Limited evidence of carcinogenicity in humans
Group B_2—A combination of sufficient evidence in animals and inadequate or no evidence in humans
Group C—Possible human carcinogen (limited evidence of carcinogenicity in the absence of human data)
Group D—Not classifiable as to human carcinogenicity (inadequate human and animal evidence of carcinogenicity or no data available)
Group E—Evidence of non-carcinogenicity for humans (no evidence of carcinogenicity in at least two adequate animal tests in different species or in both adequate epidemiologic and animal studies).

The CRAVE Workgroup regards agents classified in Group A or B as suitable for quantitative risk assessment. The suitability of Group C agents for quantitative risk assessment requires a case-by-case review because some Group C agents do not have a data base of sufficient quality and quantity to perform a quantitative carcinogenicity risk assessment. The weight-of-evidence basis was used to eliminate Group D and E constituents from further consideration as carcinogens.

Under each of the regulatory options presented in today's proposal, the Agency is using the same risk level for Group A, B, and C carcinogens. This approach is consistent with the way carcinogens are treated in the Toxicity Characteristic rule and the delisting program. For those options where the Agency is planning to use a low multiplier of the health-based number (*i.e.*, 1 or 10), a risk level of 10^{-6} was selected on the basis for the exemption criteria. Under these options, the exemption criteria levels may be protective from any likely exposures. The use of the 10^{-6} risk level is consistent with other RCRA programs where the goal is to be fully protective (*i.e.*, clean closure).

For options where a multiplier of 100 is used, the Agency's intent is to make the exemption criteria consistent with the Toxicity Characteristic regulatory levels. (It is important to note that, even though the approach may be consistent with the TC, some of the specific exemption criteria will be different from the TC regulatory levels because the Agency has revised several health-based numbers since the TC was promulgated.) Therefore, the Agency proposes to use a risk level of 10^{-5} to establish exemption criteria under those options. While the Agency recognizes that there may be some potential risk if wastes exempted under these options are mismanaged, the CBEC contingent management option may minimize the likelihood of complete mismanagement due to minimum design requirements.

B. Exemption Scenarios

In developing the different proposed regulatory options, the Agency has derived exemption criteria based on two scenarios which could potentially lead to high exposures. The first exposure scenario assumed by the Agency is one of groundwater contamination, where waste is placed in unlined landfill and the leachate from the waste then contaminates the groundwater and reaches nearby drinking water wells. To assess the exposure potential from the leachate scenario, the Agency applies the Toxicity Characteristic Leaching Procedure (TCLP) to the waste and measures the concentration of hazardous constituents in the test leachate.

However, there are certain types of wastes (*i.e.*, contaminated soils) which may not always be disposed of in landfills. Under many circumstances, these soils could either be left in place or treated and then put back where they were removed. Therefore, the Agency developed an additional set of exemption criteria for soils based on an exposure scenario whereby there is direct contact with the soil in a potential future residential setting. To assess the exposure potential from this scenario, the Agency measures the total concentration of hazardous constituents directly in the soil.

C. Exposure Assumptions

The Agency has evaluated three sets of exposure assumptions for the contaminated groundwater scenario and one set of exposure assumptions for the in-place waste scenario.

1. Contaminated Groundwater Scenario

In deriving criteria for hazardous constituents in waste leachates, the Agency needs to consider (1) the expected chemical fate of each individual hazardous constituent in the landfill and the subsurface environment; (2) the amount of dilution and attenuation that reduces the concentration of the constituents in the leachate or the groundwater as they migrate to a drinking water well; (3) if the groundwater is contaminated, the amount that is consumed; and (4) the health effect of that consumption.

To simulate the potential leaching of a waste in a landfill, the Agency uses the Toxicity Characteristic Leaching Procedure (TCLP) test described in detail in the Toxicity Characteristic rule. As an alternative for wastes which will

never be disposed with municipal wastes, the Agency is soliciting comment on the Synthetic Precipitation Leaching Procedure, which is discussed in greater detail in section IX.

Once the toxicants leave the landfill in the leachate, they will flow through unsaturated zone of the soil to the saturated zone. To simulate this process as well as the contaminant movement in the saturated zone, the Agency used the EPACML groundwater fate and transport model which was developed and employed in the Toxicity Characteristic regulation. This model has the capability to model some subsurface chemical processes like hydrolysis, biodegradation, and metal speciation.

In the TC rulemaking, however, the Agency found that it did not have enough data to incorporate these factors into the rulemaking, although hydrolysis rates were evaluated and compounds which hydrolyzed rapidly were not included in the rule. At that time, the Agency pledged to reconsider these chemical processes once more data became available.

In hydrolysis, certain classes of organic constituents transform into other constituents in the presence of water. In developing the TC rule, the Agency found that the DAF of 100 was not appropriate for some constituents because they hydrolyzed rapidly and the Agency had little information on the products formed during the hydrolysis process. Through its own research and from published data, the Agency has identified hydrolysis rates for some of the constituents listed in Appendix [x+1] of today's rule. These rates are found in the docket to today's rule. Should the Agency choose to develop constituent specific DAFs, the Agency proposes that it would use these reported values in combination with appropriate data on hydrolysis products in the EPACML model to determine these DAFs. The Agency requests comment on the accuracy of this data and its appropriateness for regulatory purposes.

For those Appendix VIII constituents for which the Agency does not have hydrolysis data, the Agency would welcome any data known to commenters. Under the Toxic Substance Control Act, the Agency has published a protocol for determining hydrolysis rates (see 40 CFR 796.3500; 53 FR 23081). Commenters are urged to provide hydrolysis data consistent with the procedures outlined in this protocol. If the Agency finds that this data meets the standards of this protocol, EPA would propose, after notice and opportunity for comment, to use this data in combination with appropriate data on hydrolysis products for developing constituent-specific DAFs.

As indicated above, the Agency is concerned about transformation products of hydrolysis. After a hazardous constituent is hydrolyzed, the resulting transformation chemical may be just as hazardous as the original contaminant. Before applying a hydrolysis rate to determine the appropriate DAF for a constituent, the Agency requires data on the hydrolysis products, including their toxicity hydrolysis rates. Therefore, the Agency is requesting such information along with recommendations on how to utilize the information in developing DAFs. EPA has developed an approach to modeling hydrolysis reactions and products, which is described in the docket for today's rulemaking.

In biodegradation, microbes digest certain organic chemicals as a source of nutrients. Biodegradation of organic wastes in the soil is the principal physical mechanism for septic tanks and other common waste disposal methods. Recent research has demonstrated that many hazardous organic chemicals can naturally biodegrade in the soil under certain conditions. The Agency has in today's docket some research articles which summarize observed biodegradation rates in field and laboratory work.

The EPACML model includes an input parameter for a chemical-specific first-order biodegradation rate. Therefore, the Agency believes that biodegradation should be included in an assessment of potential exposure to groundwater contamination if appropriate information on biodegradation products (i.e., their toxicity and fate and transport proprieties) is available.

However, the Agency has previously been concerned that biodegradation rates vary from site to site and that laboratory results sometimes have not been verified by actual observed biodegradation rates in the field. Subsurface conditions are often anaerobic, and laboratory test are generally done under aerobic conditions. In fact, the absence of verified results prevented the Agency from including assumptions of biodegradation in the final TC rule. In an effort to obtain accurate, verifiable biodegradation rates under a variety of conditions, the Agency published a protocol under TSCA (53 FR 22320; 40 CFR 795.54) to obtain anaerobic biodegradation rates suitable for regulatory purposes. It is the Agency intent, after public notice and opportunity for comment, to evaluate and use any data submitted by petitioners which EPA finds to conform to this protocol, along with appropriate data on biodegradation products, as part of the EPACML simulation to determine constituent specific DAFs.

The Agency recognizes that the maximum length of time required to carry out this protocol—64 weeks—is longer than the promulgation date for the final rule, April 28, 1993. However, EPA will continue to accept biodegradation data as it becomes available and promptly place such data in the public record. As scientific understanding of biodegradation and other soil chemical reactions grows, the Agency will reevaluate its risk assessment (including the DAFs) as appropriate.

Another important chemical reaction in soil is the adsorption of constituents by soil particles. Both metals and organic constituents can adsorb and de-adsorb on to the negative ions which dominate the surfaces of most soil particles. If the constituents stay bonded to the soil and do not de-absorb, they can not migrate (or migrate very slowly) to the groundwater and to a potential point of exposure. As discussed below, the critical issue in utilizing adsorption factors is defining the total extent of potential contaminant release.

Organic adsorption is primarily influenced by six factors: molecular size, hydrophobicity, molecular charge, organic molecular fragments that undergo hydrogen bonding, the three dimensional arrangement of the organic fragments, and molecular fragments of the chemical which undergo coordination bonding. These six factors are discussed in today's docket. The principal measure of organic adsorption is a relationship between the first-order adsorption factor and the octanol/water partition coefficient. EPA has determined these partition coefficients for many of the appendix VIII constituents. These coefficients are discussed in today's docket. The EPACML model has an input parameter for this coefficient and the Agency will evaluate and use these values, if appropriate, to predict constituent-specific DAFs.

Inorganic constituents can undergo a complex series of speciation reactions (including complexation, precipitation, and adsorption) between metallic ions in the leachate and the soil particles. At the time of the TC rule, the Agency determined that it did not have the analytic data and methods to estimate cation exchange. In response to comments, the Agency announced that it was in the process of creating a model, MINTEQA2, to model more accurately geochemical speciation. The Agency has

recently completed a version of MINTEQA2, which is discussed in today's docket for comment. As the Agency develops constituent-specific DAFs, the Agency will use this model to develop adsorption rates for all appropriate appendix VIII constituents. The Agency requests comments on appropriate input model parameters.

The Agency requests comments on other chemical reactions which commenters believe may be important for cling potential contaminant fate in the subsurface environment.

For contaminant transport, past regulatory applications of the EPACML model have developed dilution/attenuation factors only under steady-state conditions. In the analyses for the TC rule, as described in the preamble and background documents (55 FR 11798, March 29, 1990) the Agency found that the assumption of steady state conditions was not appropriate in developing DAFs for some of the proposed constituents. In this proposal, the Agency is now considering DAFs for over 200 constituents and is investigating explicitly contaminant flow assuming transient flow. The EPACML model can determine DAFs assuming non steady-state flow and the Agency proposes to use this model for this purpose once the issues concerning the extent of contaminant release have been resolved.

In order to assume non steady-state flow, the length of the contaminant pulse must be determined. In a landfill, contaminants will leach from the waste as the precipitation percolates through the layers of waste. In hazardous waste which is solid, relatively mobile contaminants near the surface of the waste will leach first. Contaminants deep in the interior of waste or tightly bonded chemically to the solid will take much longer to leach out, if ever. Thus, the expected contaminant concentration of the leachate over time will resemble a "pulse"—a build-up of concentration in short-run followed by a rapid decay to a lower, almost steady-state concentration. Therefore, to model a non steady-state simulation, the Agency needs to make appropriate estimates of the source of contamination. In a preliminary background analysis for the TC rule, the Agency assumed that the full volume of the landfill was filled with solid waste and the contaminant of concern at a concentration of 1000 ppm. The Agency used this approach as a screening check of its results and is concerned that this scenario may not be representative of actual disposal conditions. The Agency calls for comments on the appropriate simulation parameters which will provide adequate protection of human health and the environment.

Related to this issue, the Agency also calls for comment on whether the length of time necessary for a contaminant to reach a receptor well should be of regulatory concern. For example, if the Agency determines that under non-steady-state conditions a certain constituent will likely only migrate to the receptor well 100 or 1000 years in the future, how should the Agency factor that result in its calculation of an exemption multiple for that constituent? The Agency requests comment on this issue. Specifically, what, if any, limits should be placed on time periods of regulatory concern for groundwater exposure.

The EPACML model also incorporated specific dispersitivity constants derived from the literature. In the TC rule, the Agency received many comments on this issue. Since there may be better scientific understanding and additional field observations of this phenomena may have emerged in the time after the development of that rule, the Agency again requests comments on EPACML's dispersivity assumptions. Specifically, the Agency requests comment on its assumption of no horizontal dispersivity in the unsaturated zone. Although the Agency believes that incorporating horizontal dispersivity will have little effect on overall DAFs, the Agency asks for additional information on this issue.

Also, for each simulation, the EPACML chooses randomly from a distribution of unsaturated zone depths as it performs a nationwide simulation for the calculation of DAFs. For these simulations, EPA used a regression relation to determine dispersivity values as a function of the unsaturated zone depth. However, to avoid excessively high values of dispersivity for deep unsaturated zones, a maximum dispersitivity of 1.0 m was used for depths greater than 44.5 m. The Agency requests any data or comment related to this issue.

Additional EPACML model limitations in modeling contaminant transport in the unsaturated and saturated zones include the fact that the model does not simulate the movement of nonaqueous materials and the assumption that the subsurface media are homogeneous and isotropic and without significant fracturing. The Agency recognizes that these assumptions may underestimate and overestimate risk for various actual conditions. In response to comments to the TC rule, the Agency found that these assumptions were necessary for model development and were appropriate for regulatory use. The Agency has not changed its position on this issue and proposes to use the existing modeling assumptions in the EPACML model. However, the Agency once again asks for comment on these issues and asks that commenters provide specific suggestions, recognizing the need for computational efficiency, on how the model may be improved to incorporate anisotropy, heterogenous conditions, and fractured flow.

A further concern with the EPACML model is that it simulates the migration of contaminants from landfills whereas many wastes are managed in surface impoundments, which can have higher leaching rates due to hydraulic pressure. The Agency has developed a model to simulate leaching from surface impoundments and has included it in the docket for today's rule. The Agency solicits comment on the use of this model in setting exemption criteria.

Using the EPACML model and other information, including data from EPA's 1986 Solid Waste Landfill Survey, the Agency potential exposure and risk to populations drinking water from wells near unlined landfills receiving exempted waste. This analysis is included in the docket for today's rule. In assessing risks, the Agency first used the EPACML model to estimate the potential number of people whose drinking water wells would contain contamination at levels above the health based numbers. This estimate was done for two cases: (1) assuming the exemption criteria were set at 100 times the health based numbers and (2) assuming the exemption criteria were set at 10 times the health based numbers. Once the Agency had estimated the potential number of people exposed, it then evaluated the potential risks associated with those exposures.

If the exemption criteria are set at 100 times the health based numbers, the Agency estimates that 10 to 15 percent of the population using private wells within one mile downgradient from Subtitle D landfills receiving exempted wastes could be exposed to contamination above the health based number if the wastes were all contaminated to the extent allowable (i.e., if all exempted wastes leached at 100 times the health-based level). Approximately 1 to 2 percent of the population described above could be exposed to contamination at more than 10 times the health based numbers.

If unlined Subtitle D landfills with the same distribution of proximity to drinking water wells received these exempted wastes today, approximately

10,000–15,000 people would be exposed to levels above health based numbers, and 1,000–2,000 people would be exposed to levels more than 10 times the health based numbers. Since not all landfills would receive exempted wastes, proportionally fewer people would actually be potentially exposed. More importantly, little of the exempted wastes would leach at levels of 100 times the health-based numbers, so exposures would be even lower.

However, to conduct this assessment, the Agency had to make some assumptions which it recognizes could overstate the estimate of the exposed population. For example, EPA assumed that all landfills in the 1986 Survey were unlined. However, in its Regulatory Impact Analysis for the 1991 final Subtitle D rule, the Agency found that 18 states (containing over half of all landfills in the 1986 Survey) required some form of engineered containment system—e.g., synthetic liners, leachate collection systems. Thus, this assessment would overestimate the amount of leachate that could migrate out of the distribution of landfills. In addition, since 1986 the Agency has promulgated subtitle D criteria which would make the exposure scenario and distribution in the assessment unlikely once these requirements are fully implemented. In addition, this assessment assumes that the population distribution around industrial and demolition Subtitle D landfills is comparable to the distribution around municipal Subtitle D facilities. It is possible that fewer people reside near industrial or demolition facilities as municipal landfills, since they are often located in or near residential areas.

To evaluate potential risks to the exposed population, the Agency considered different assumptions concerning period of residency near a landfill and amount of water consumed. In developing the health based numbers (MCLs, RSDs, and RfDs), the Agency uses the conservative consumption factors of 2 liters/day of water from the same source for a lifetime of 70 years. More average exposure assumptions are a consumption rate of 1.4 liters/day and a residency period of nine years.

The effect of applying more average exposure assumptions differs depending on whether or not the constituent of concern is a carcinogenic. For carcinogens, the risk to the individual is reduced in proportion to the decreases in consumption rate and residency time, or by about one order of magnitude. Thus if average exposure factors are used, and the exemption criteria are set at 100 times the RSD based on a risk of 10^{-5}, then the estimated individual risks for the 10–20 percent of the population exposed at levels above the health based numbers would be 10^{-6} or greater, rather than 10^{-5} or greater.

However, over a 70 year period there would be more people residing at the contaminated site (assuming the residence is continually occupied) so that more people would be exposed, although at lower individual risks. Therefore, the overall population risk (i.e., number of expected cancer cases in the population) would decrease only by 30%, the amount of the reduction in the consumption rate.

For noncarcinogens, the risk may or may not be reduced depending on whether the adverse effect will occur over an exposure period of less than a lifetime and the extent to which the 30% decrease in the water consumption rate would in some cases reduce exposure to levels below the RfD. For many of these toxicants, exposure to levels above the RfD for a period of nine years would be of significant concern, particularly if the effects are ones such as reproductive toxicity or developmental toxicity.

Finally, it is important to keep in mind that the MCLs are not based solely on risk factors; other factors such as readily achievable analytical detection limits and economic feasibility of treatment are also considered. Thus for a number of constituents with MCLs, exposure at the MCL exceeds exposure levels which would be calculated based strictly on RfDs and RSDs.

If the exemption criteria are set at 10 times the health based numbers, the Agency estimates that 1 to 2 percent of the population using private wells within one mile downgradient from landfills receiving exempted wastes could be exposed to contamination above the health based numbers. For all Subtitle D landfills, this population is estimated to be 1,000–2,000, although again not all of these landfills would be receiving exempted wastes.

The Agency also evaluated the scenario where the exemption criteria were set equal to the health based numbers. This scenario assures that nobody would be exposed to drinking water concentrations above these levels of concern, since no dilution/attenuation is assumed. To evaluate whether this assumptions was completely unrealistic, the Agency collected data from a number of contaminated sites which indicate that, at least in a few worst-case situations, the groundwater concentrations of contaminants hundreds of feet from the source had decreased very little from the concentrations at the source. One interpretation of these data (which are presented in the docket for today's rulemaking) is that very low DAFs may occur. The Agency requests comment on these observations and whether the likely conclusion from these results is that very little dilution and attenuation has occurred.

2. Scenarios for Wastes Not Placed in Controlled Units

In developing the additional exemption criteria for soils and wastes not subject to landfill controls, on which EPA is seeking comment, the Agency evaluated a scenario in which there would at some time be residents at the site who would be exposed directly to the waste contaminants. The primary exposure would be through incidental ingestion (particularly by children). Children are particularly at risk from soil ingestion because of their higher soil ingestion rates and much lower body weights. For this analysis, a soil ingestion rate of 0.2 grams/day and a body weight of 16 Kg were used for children. The Agency also assumed that 100 percent of the ingested contaminant was absorbed. Adult exposure through residential soil ingestion was assumed to be low relative to childhood exposure, although the Agency solicits comments on whether and how adult residential exposure should be included.

In assessing the risks from this scenario, the Agency used different approaches for assessing risks from carcinogens and systemic toxicants. For carcinogens, the childhood exposure was averaged out over the 70 years lifetime to determine the risk of developing cancer over a lifetime. However, for non-carcinogens the childhood exposure was not averaged out over a lifetime in order to ensure that the child would not be exposed to levels well above the RfD threshold levels for a five year childhood exposure period.

Additional details on all of the specific parameters and equations used in these evaluations are provided by the background document in the docket for today's rule.

In today's notice, the Agency is proposing and asking for comment on exemption levels for hazardous constituents in soils and surface wastes on the basis of direct ingestion by children.

The Agency recognizes that there are additional exposure routes which are potentially of concern and solicits comments on whether and how other exposures could be evaluated to establish exemption criteria. The other potential human exposure routes of

concern include dermal absorption, inhalation of particulates and volatile compounds, runoff to surface waters, adult soil ingestion, and uptake of contaminates by food crops and grazing animals used for food and daily products. In addition, the Agency solicits comments on whether additivity or contaminatant contributions from other sources should be considered. These issues are also discussed in section IX, "Additional Exemption Criteria Under Consideration."

One reason for concern over other exposure routes is that, despite the conservative nature of the direct exposure assumptions, there are a number of constituents that do not appear to pose a significant threat via ingestion. As illustrated in the background document supporting the derivation of the exemption levels, these exposure pathways can predict "acceptable" soil levels that are quite high. To ensure that the exemption levels would be protective of other exposure routes, the Agency has proposed, and seeks comment on, capping the surface waste exemption levels at 1,000 ppm. This cap is an alternative to levels which would otherwise be very high. The soil cap has been proposed for the following constituents:

Acenaphthene
Acetone
Acetophenone
Acrolein
Barium
Benzyl alcohol
Butanol
Butyl benzyl phthalate
Carbon disulfide
Chlorobenzene
Chlorobenzilate
2-Chloro-1,3-butadiene
Cresols
Cumene
Cyanide
1,2-Dichlorobenzene
Dichlorodifluoromethane
1,1-Dichloroethane
trans-1,2-Dichloroethene
Di-n-butyl phthalate
Diethyl phthalate
Dimethyl phthalate
2,4-Dimethyl phenol
Di-n-octyl phthalate
Diphenylamine
2-Ethoxyethanol
Ethyl acetate
Ethylbenzene
Ethyl ether
Ethyl methacrylate
Fluoranthene
Fluorene
Formic acid
Isobutyl alcohol
Methanol
Methyl ethyl ketone
Methyl isobutyl ketone
Methyl methacrylate
Naphthalene
Nickel
Phenol
Phthalic anhydride
Pronamide
Pyrene
Styrene
2,3,4,6-Tetrachlorophenol
Toluene
2,6-Toluenediamine
1,1,1-Trichloroethane
Trichlorofluoromethane
2,4,5-Trichlorophenol
1,1,2-Trichloro-1,2,2-triflourethane
Xylene
Zinc

Therefore, although the Agency believes that not very many soils with high concentrations of any constituent would pass both the surface waste and leachate exemption levels, EPA is proposing to cap the soil levels to ensure that these wastes are not excluded inappropriately where hazards from the constituent may result from factors not reflected in the exposure scenarios. As previously discussed, there may be additional potential exposure pathways of concern for humans. In addition, there may be sensitive environmental endpoints that would be adversely impacted by exposure to these constituents at 1,000 ppm or higher. This issue is discussed in greater detail in Section IX, "Additional Exemption Criteria Under Consideration."

The Agency is also proposing that the Regional Administrator and/or authorized State authority retain an override authority to deny exemptions to facilities where such potential threats may exist. The Agency requests comments on this approach and, specifically, data demonstrating whether soils containing these types of constituents are likely to pass both the soil and leachate criteria.

It is important to note that 1000 ppm cap may be necessary for this rule because the rule is a generic, self-implementing set of standards, with no inherent mechanism for dealing with different potential exposure routes. This situation is in contrast to situations where site-specific and chemical-specific cleanups are being done under RCRA Corrective Action and CERCLA authority. In these cases, other exposure routes are considered where appropriate, and there is no need to apply a generic cap in establishing action levels or cleanup standards. Therefore, EPA proposes that the regulatory authority may modify the "cap" on a site-specific basis.

High temperature metals recovery (HTMR) residues are used as road base materials or as anti-skid materials. The Agency excluded from subtitle C HTMR residues provided that these slag residues meet designated concentration levels, are disposed in subtitle D units, and exhibit no characteristics of hazardous wastes (see 56 FR 41164); however, the Agency did not make a final decision as to whether residues used as road base or anti-skid materials should be excluded. The Agency decided that its regulatory tools for evaluating road base materials (*i.e.*, methods to evaluate exposure) were too uncertain to make a final decision. Comments submitted to the Agency maintain that the use of the EPACML model, which estimates potential risk to groundwater, is overly conservative for materials that are applied to the land as road base (*i.e.*, they are not co-disposed with municipal solid wastes in an unlined landfill, and are generally covered with concrete or asphalt that should reduce infiltration) and that application to the land as road base is actually more environmentally protective and beneficial manner than disposal in a subtitle D landfill (see comments submitted by Beveridge and Diamond, P.C. on behalf of the American Iron and Steel Institute, April 6, 1992). The Agency requests comment on the appropriateness of the EPACML model in evaluating risks from HTMR materials used as road base, the appropriateness of the Synthetic Precipitant Leaching Procedure (method 1312), and suggestions on whether (and how) to evaluate pathways other than ground water contamination.

VII. Analysis and Limits of Detection

To qualify for an exemption as proposed today, a facility bears the full burden of demonstrating that: (1) All analytical data used for the exemption demonstration are of known precision and accuracy, and (2) all analytical data are generated using analysis techniques that are sufficiently sensitive to prove that the concentrations of the constituents of concern are not present at the selected regulatory levels. These proposed requirements mandate the use of standardized analytical methods (or their equivalents), comprehensive quality control procedures, and, for those constituents of concern whose health-based exemption levels are significantly lower than readily achievable analytical quantitation limits, the achievement of specified quantitation limits.

A. Standardized Analytical Methods

1. SW–846 Methods and Quality Assurance

EPA is identifying specific analytical methods that are applicable for each of the exemption constituents, taken from "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods", U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986 (SW–846) and subsequent updates. This compendium of analytical and test methods contains the Agency's standardized RCRA analytical methods. The recommended methods are listed in Appendices [x+1] and [x+2].

SW–846 methods are written to allow the analyst latitude within the analysis scheme to address diverse matrices. The Agency recognizes that achievement of the prescribed quantitation limits may require some modifications to the identified analytical method, such as additional sample cleanup steps or use of alternate gas chromatographic column or detector systems, for the analyses of certain waste matrices. EPA proposes that such modifications be within the framework of the applicable

SW–846 method, as specified in Chapter Two of the manual and that they be documented.

The proposed SW–846 analytical methods contain general performance data (*i.e.*, precision, accuracy, and sensitivity) to determine how they can be expected to perform in a variety of matrices. Chapter 1 of SW–846 contains QA/QC recommendations which apply to all sampling and analysis procedures. The Agency believes that analyses performed in support of exemption demonstrations should have an appropriate level of the quality control like those methods recommended in SW–846 unless alternative equivalent methods are used (see discussion on Alternative Methods). While the Agency is not proposing that the quality control procedures in Chapter One be specifically required, it does solicit comment on such an approach.

2. Alternative Methods

The Agency recognizes that analytical methods have been developed which are similar in scope to many of the SW–846 analysis methods (*e.g.*, EPA's Methods for Organic Analysis of Municipal and Industrial Wastewater). Therefore, EPA is proposing that facilities may use other methods as long as the facility demonstrates that the methodology used was sensitive enough to have detected the analytes of concern at the levels specified in the regulation.

B. Need for Quantitation Limits

The Agency is proposing quantitation limits that represent the lowest levels that can be reliably measured within acceptable limits of precision and accuracy during routine laboratory operating conditions using the specified methods. These levels are referred to as "exemption quantitation criteria" or EQCs and are presented in Appendices [x+1] and [x+2]. The Agency believes that it is necessary to specify EQCs because a number of the constituents on the exemption list have health-based exemption levels which are not analytically quantitatable in all matrices. By establishing EQCs as benchmarks or maximum allowable quantitation limits (that is, facilities must achieve actual quantitation limits that are no higher than the specified EQCs), the Agency is ensuring that all exemption demonstrations will achieve equivalent degrees of quantitation and that wastes with high levels of contamination that tend to confound analytical protocols are not exempted.

A comparison of the risk-based exemption levels with the concentrations measurable using currently available methods reveals a number of cases where quantitative measurement of analyte concentration at the risk-based level cannot be achieved reliably, using standardized analytical methods, particularly for the option based on a DAF = 1. EPA is proposing that for all constituents whose exemption quantitation limits exceed their health-based exemption levels, facilities must achieve the specified quantitation limits.

For example, the health-based exemption level (DAF = 1) for aldrin in leachate and wastewaters is 0.002 ug/l. The specified EQC for aldrin in leachate and wastewaters is 0.04 ug/l. Exemption demonstrations must show that aldrin cannot be quantitated in the wastewater or leachate above 0.002 ug/l, with a quantitation limit at least as low as 0.04 ug/l. The Agency will assume that the exemption level for aldrin has been met if the method has been demonstrated to achieve the EQC of 0.04 ug/l and no aldrin is found in the material. However, if aldrin is quantitated at a level above 0.002 ug/l, the exemption criterion has not been met, even if the quantitated level is below 0.04 ug/l.

The Agency recognizes that by relying on EQCs for constituents with health-based exemption levels that are significantly lower than analytically quantitatable levels, wastes and media that contain toxic constituents at concentrations above their exemption levels could be exempted. The Agency believes it is appropriate to propose exemptions notwithstanding this issue for a number of reasons. For example, when evaluating wastes to determine whether they should be listed as hazardous, the Agency considers whether the levels of constituents of concern are hazardous, rather than whether constituents which cannot be quantitated may be present at levels above their health-based levels.

The Agency requests comments on this approach to this issue. While the Agency believes that this is a reasonable approach, it recognizes that the issue of non-quantitatable health-based exemption levels for some constituents may be of concern. Table 6 lists the exemption list constituents whose EQCs exceed their health-based exemption levels (based on a DAF of 1) by more than one order of magnitude (analysts should generally be able to achieve EQCs which are within one order of magnitude of the exemption level by fine-tuning the method). As noted in this table, not all of these constituents are expected to be prevalent in wastes (based on the prevalence analysis discussed in Section VI.C).

TABLE 6.—CONSTITUENTS WITH EXEMPTION QUANTITATION CRITERIA WHICH EXCEED THEIR HEALTH-BASED EXEMPTION LEVELS (BASED ON A MULTIPLIER OF 1) BY MORE THAN ONE ORDER OF MAGNITUDE

Acrylamide.
Acrylonitrile.
Aldrin.
Aramite.
Benzidine.
Benzotrichloride.
Bis(2-Chloroethyl)ether.
Bis(2-chloroisopropyl)ether*.
Bromodichloromethane.
Chlorodibromomethane.
Diallate*.
Dibenz (a,h) antracene.
3,3'-Dichlorobenzidine.
1,3-Dichloropropene.
Diethylstilbestrol*.
3,3'-Dimethoxybenzidine.
7,12-Dimethylbenz(a)anthracene.
3,3'-Dimethylbenzidine*.
2,4-Dinitrotoluene.
2,6-Dinitrotoluene.
1,4-Dioxane.
2378 PeCDDioxins.
Epichlorohydrin.
1,2-Diphenylhydrazine.
Epichlorohydrin.
Ethyl methanesulfonate*.
Famphur*.
23478 PeCDFuran.
Hexachloro-1,3-butadiene.
Kepone*.
3-Methylcholanthrene*.
2-Naphthylamine*.
2-Nitropropane.
N-Nitroso-di-n-butylamine*.
N-Nitrosodiethylamine*.
N-Nitrosodimethylamine*.
N-Nitrosodi-n-propylamine.
N-Nitrosomethylethylamine*.
N-Nitrosopiperidine*.
N-Nitrosopyrrolidine*.
Pentachloronitrobenzene*.
Pentachlorophenol.
Phenylene diamine.
Safrole*.
o-Toluidine*.
2,4-Toluenediamine.
p-Toluidine*.
Tris(2,3-dibromopropyl) phosphate*

* Not known to be prevalent in wastes.

The Agency requests comments on the other options presented below for quantitation of constituents whose EQCs exceed the health-based exemption levels:[5]

the Appendix VII constituents for which their waste was listed.

• Facilities would be required to achieve quantitation limits as low as the health-based exemption levels for all of exemption constituents. This approach could be very costly and difficult to achieve and impose an unnecessary regulatory barrier for generator of wastes which contain only a few constituents.

[5] As a point of clarification, note that facilities are responsible for all constituents and that these options only focus on the subset of exemption list constituents whose QLs exceed their health-based exemption levels.

The Agency is also soliciting comments on whether facilities should be allowed to demonstrate through mass balances that a constituent could not be present at levels above its health-based levels. In addition, the Agency requests comments on whether an exemption demonstration should be considered adequate if all proper method and QC procedures are followed and the constituents are not detected, even though the EQC level has not been met. This situation could arise even in relatively clean matrices if the constituents bind strongly to the matrix or if the constituents degrade rapidly during the analysis. However, the Agency would not want the exemption to be allowed if the EQC could not be achieved because of interference from other contaminants in the matrix. The Agency requests comment on the use of mass balances in situations where such low concentrations may render the analysis meaningless.

C. Development of Exemption Quantitation Criteria (EQC)

The Agency's preferred way to determine reliable quantitation levels is through interlaboratory studies such as method performance evaluations. However, if data are unavailable from interlaboratory studies, quantitation limits are estimated based on the method detection limits and an estimated multiplier to account for laboratory variability and matrix effects.

To develop the EQCs proposed in today's notice, EPA compiled a master list of the quantitation limits published for the identified constituents in the third edition of SW–846, including the first update and the soon to be proposed second update (both of which are widely distributed throughout the regulated community). The Agency believes that the resultant list of EQCs associated with the methods specified in Appendices [x+1] and [x+2] presents achievable quantitation limits for the proposed exemption constituents.

The Agency believes that these EQCs achieve the most effective assessment of any adverse impact on human health and the environment that can be incorporated into a generic-type standard such as today's proposed rule. These quantitation limits are appropriate because the effect of an exemption would be to remove wastes and media from Subtitle C control. The Agency requests comments on the proposed quantitation limits as well as any data supporting those comments. Supporting documents are available in the docket for examination. The proposed methods and EQCs for each constituent are presented in Appendices [x+1] and [x+2] of the proposed rule.

VIII. Synthetic Precipitation Leaching Procedure

To determine whether a waste qualifies for an exemption, the Agency is proposing that the TCLP test must be applied to the waste to evaluate its leaching potential. However, the Agency recognizes that the TCLP, which was developed to simulate the leaching potential of wastes codisposed with municipal solid wastes in a municipal landfill, may not always be appropriate for evaluating actual risks from other scenarios such as surface wastes or media or single waste monofills.

Therefore, the Agency is soliciting comment on the use of the synthetic precipitation leaching procedure (Method 1312) to measure the mobility of contaminants from wastes and media under the described management scenarios. Method 1312 is expected to be proposed for inclusion in the second update to the Third Edition of SW–846 in 1992. This method simulates the leaching process created by acidified precipitation. The Agency has included this method in its guidance for the evaluation of clean closures. The Agency believes that this leaching procedure may be an appropriate measure of contaminant mobility for certain wastes and media and, therefore is considering the use of this test in exemption demonstrations for certain wastes.

In Method 1312, which is fully described in the docket supporting this proposal, the waste is mixed with a mildly acidic aqueous leaching medium containing inorganic acid rather than the buffered acetic acid solution used in the TCLP. Beyond that, the procedure is essentially identical to the TCLP.

The Agency has completed precision and ruggedness studies on Method 1312. The studies indicate that Method 1312 produces a reasonably precise measurement of the mobilization of organic compounds and certain metals from soil. The method is also fairly rugged, showing little variation with any of the critical parameters that were tested (*e.g.*, extraction fluid pH, extraction time, liquid/solid ratio) (EMSL, 1989). Based on this study, the Agency believes that Method 1312 may be appropriate for evaluating leaching of certain wastes.

Specific waste types where Method 1312 may be appropriate include soils, waste going on-site or regulated off-site monofills, wastes going to any industrial landfills which do not receive municipal wastes or other wastes which may generate organic acids. The Agency solicits comments on the technical merits and the implementation issues which could affect these disposal scenarios.

IX. Additional Exemption Criteria Under Consideration

The Agency believes that the options presented for exemption criteria described earlier in today's notice (*e.g.*, the exemption levels and testing requirements) are generally conservative and will serve as reasonable criteria for self-implementing hazard determinations. However, the Agency recognizes that the exemption levels are based solely on human health effects levels and primarily on risks of groundwater contamination. This Section outlines approaches to defining other exemption criteria which the Agency may consider as potential requirements for exemption demonstrations. If these criteria are not adopted as part of any rule finalizing this notice, EPA requests comment on the need for an omnibus authority that the Regional Administrator or authorized State official may use as an additional regulatory authority to require the application of these criteria or submission of additional information on a case-by-case basis if extraordinary site-specific considerations warrant evaluation of other factors. The Agency envisions such an authority to be rarely necessary.

The Agency seeks comment on the incorporation of a bioassay demonstration as a potential exemption requirement. If adopted, facilities would be required to demonstrate that their waste or contaminated media, as a whole, is not expected to have a detrimental impact on the environment through application of a bioassay procedure. Many types of bioassays exist, including those that measure toxicant effects on the growth and reproduction, acute lethality, mutagenicity, carcinogenicity, and teratogenicity to small mammals, fish, and invertebrates. The Agency believes that it may be appropriate to include a bioassay requirement because the exemption levels are geared toward human health effects. However, EPA acknowledges that bioassays may be very expensive to conduct, the results may be biased towards the test species used, and toxic manifestations may be difficult to extrapolate to mammals. EPA is not sure what assumptions would be appropriate when using laboratory results to predict field effects regarding fate and transport to receptor environments.

While the lowest exemption level (option 3, DAF of 1) are lower than or approximately equal to 60 percent of the Ambient Water Quality Criteria (see following discussion), the Agency believes that this approach would address additional concerns about whole waste (or leachate) effects on environmental receptors. The Agency compared the lowest exemption levels to the Ambient Water Quality Criteria (AWQC) (Gold Book, EPA 440/5–86–001). These criteria include promulgated criteria (AWQC), as well as "lowest observed effects levels" (LOELs) (which have not yet been promulgated). The water quality criteria are based on environmental water quality criteria (*i.e.*, acute and chronic fish (fresh and marine) toxicity), and human health water quality criteria (*i.e.*, human ingestion of fish, or fish and surface water). The exposure scenario underlying these numbers is based on surface water pathways. (See Note to File regarding Health-based Levels and AWQC in the Docket for Today's Rule.) Although EPA is well aware of the differences between CBEC and ECHO number, and AWQC, the Agency notes that linking leaching landfills to surface water contamination involves an extensive modeling and assessment effort which has not been performed on a notional basis. The Agency does not know the extent to which this is surface waster contamination routes of serious concern. EPA solicits comment on whether or not surface water contamination from landfill leachate is so site-specific and unusual that control of it is could best be addressed under the Regional omnibus authority proposed today, or whether CBEC/ECHO values need to be adjusted to reflect the level of control provided by AWQC.

The Agency has also considered numerical means of predicting possible additive effects from multiple constituents, but decided not to add risks from constituents for this proposal. The Agency does not have sufficient and adequate scientific information to establish a numeric method. The Agency is unsure of the relationship, if any, between constituents that reach the receptor at different points in time. Further, each receptor—bird, fish, human—has different physiological system for responding to exposure to toxicants. Primarily, the Agency was concerned that the difficulties of implementing such an approach outweigh any potential incremental benefits beyond the existing conservativeness of the exemption levels and the possible use of a 1,000 ppm exemption level cap. This approach is consistent with that used to evaluate delisting petitions which also does not incorporate additive effects. (Waste-specific additive effects are considered during RCRA corrective action and clean closure and in Superfund cleanups and may be considered in the evaluation of exemptions on a case-by-case basis.) Comments are requested on the proposal not to consider additive effects from multiple constituents in today's proposed exemption process.

The Agency also requests comment and supportive data on whether other exposure pathways should be considered for specific constituents and the exposure scenario(s) that would be appropriate in modeling those additional exposure pathways. One pathway of particular concern is volatilization to the atmosphere. The Agency's conservative analysis has demonstrated that air emissions from TSDFs may pose substantial risk in the absence of controls. The Agency is controlling these risks in two rulemakings (final rule 55 FR 25454, June 21, 1990, and proposed rule 56 FR 33490, July 22, 1991). Together, these rules would reduce the risk from air emissions from the vast majority of these facilities to well within the risk range of other RCRA standards. The emission reductions achieved by these rules could also significantly reduce the formation of tropospheric ozone, which has adverse effects on human health and the environment.

Today's rule could affect the TSDF air emissions regulations in the following way. The TSDF rules were designed to prevent volatilization of hazardous organics as they move through storage and treatment, keeping the organics in the waste until it ultimately undergoes BDAT treatment, which is assumed to remove any significant risk from exposure via the air medium. If, under today's HWIR proposal, waste leaves the system without BDAT treatment, that waste may pose a potential risk through exposure to air emissions. If significant risk exists, it may be necessary to develop air-based exemption criteria to supplement those suggested in today's proposal. In the Agency's July 21, 1991, proposal such criteria could entail additional waste testing. The Agency specifically requests comment on this issue, and on ways to address it. Comments on these topics should address the appropriateness of incorporating such pathways into the national exemption criteria versus allowing the Regional Administrators or authorized State officials to determine the need for consideration of additional pathways (such as dermal exposure) on a case by case basis.

The options proposed today do not account for the effects of hazardous emissions into the air medium. In section 3004(n) of Hazardous and Solid Waste Amendments of 1984 (HSWA), Congress directed the Agency to promulgate regulations controlling air emissions from hazardous waste treatment, storage, and disposal (TSDF) facilities as necessary to protect human health and the environment. In developing these regulations, (Phase I final rule 55 FR 25454 (June 21, 1990), and Phase II proposed rule 56 FR 33490 (July 22, 1991)), the Agency estimated nationwide organic emissions to be approximately 1.8 megagrams per year (mg/yr)(2,000,000 tons per year). These emissions may contain toxic chemical compounds as well as ozone precursors. Since the effectiveness of these controls depends upon the fact that hazardous wastes are accounted for within the RCRA Subtitle C system, any exemption of wastes from this system has the potential of limiting the effectiveness of these controls on reducing the risk from hazardous air emissions. The Agency specifically requests comment on this issue, and on ways to address it.

Finally, the Agency recognizes that a few facilities may face difficulties meeting the exemption criteria because of very high background levels of one or more of the constituents on the exemption list in their soil or groundwater. Data from EPA Region VIII indicates high background levels of arsenic, beryllium, and chromium that appear to exceed some of the exemption levels when dilution or attenuation is not considered (this information is available in the public docket for this rule). The Agency is requesting comments on whether the exemption rule should include provisions for making statistical comparisons to background levels. One possible statistical technique for background data that conform to normality assumptions includes combining the Student-t difference of means test presented in the Permit Guidance Manual on Unsaturated Zone Monitoring for Hazardous Waste Land Treatment Units, (EPA, 1986) with the normal tolerance interval approach found in Statistical Analysis of Ground Water at RCRA Facilities—Interim Final Guidance, (EPA, April 1989). The Student-t test compares averaged waste/media concentrations to background concentrations, and is used to determine if the waste/media as a whole is within a specified criteria. However, even if the waste/media

passes the Student-t test, individual sample concentrations may still exceed the tolerance interval limit. The normal tolerance interval approach is used to compare sample concentrations to an upper tolerance value based on the background mean, standard deviation, and sample size.

If such an approach is incorporated into the final rule, it would include criteria for defining and collecting adequate background samples. More specifically, the facility would be required to identify background locations, sample size, soil depth, etc. for at least four samples in a "difference of means" demonstration, and six to eight samples for a "tolerance of means" demonstration. The facility would also need to demonstrate the normalcy of the sample distribution. The Agency would require that this information be included as part of the facility's sampling and analysis plan and subject to review by the appropriate Regional Administrator or authorized state official prior to plan implementation. Alternatively, the rule could defer any background level demonstrations to an omnibus authority designated to the Regional Administrator. Comment is requested on the need for this authority.

The Agency solicits comments on other appropriate and generic ways (1) to identify background levels in soils, and (2) to incorporate the existing 40 CFR part 264, subpart F standards for establishing background levels for groundwater. Other suggestions that address the Agency's intent to promulgate a simplified exemption with little reliance on site-specific considerations but also allow for consideration of elevated background levels will be considered.

X. Dilution

The 1984 RCRA Amendments (HSWA) established a national policy for minimizing the generation of hazardous wastes. Section 1003 of RCRA, as amended in 1984, established a national waste minimization policy stating that "wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible". The policy also cited the need to reduce the volume and toxicity of hazardous wastes which is nevertheless generated. Similarly, section 3005(h) prescribed that effective September 1, 1985, all RCRA permitttees who generate waste disposed of, treated, or stored on-site must certify (on an annual basis) that the facility has waste minimization programs in place. In addition, section 3002(b) mandates that hazardous waste generators include a certification with their hazardous waste manifests that the generator has a waste minimization program in place and that the proposed method of off-site management minimizes threats to human health and the environment. In concert with these HSWA mandates, it is the Agency's policy to encourage source reduction and waste treatment as preferable to disposal and dilution.

EPA has also recognized that successful implementation of the land disposal restrictions requires that, in general, dilution be prohibited as a partial or complete substitute for adequate treatment of prohibited toxic wastes (40 CFR 268.3). The legislative history indicates that dilution "is not an acceptable method of treatment to reduce the concentrations of hazardous constituents" (S. Rep. No. 284, 98th Congress, 1st Session 17 (1983)).

The Agency also generally opposes the dilution of hazardous wastes for several technical reasons. Most importantly, dilution is an environmentally inappropriate means to reduce toxicant concentrations when other alternatives are possible, because it does not reduce toxicant loadings to the environment. The same mass of toxicant is released to the environment when a diluted waste is disposed as would be if that same waste, prior to dilution, were to be disposed.

For these reasons, dilution is prohibited as a means to achieve the exemption levels under today's proposal. Because under some options proposed today, the rule could impact the LDR levels, allowing dilution as a means of achieving exemptions would be inconsistent with the ban on dilution included in the land disposal restrictions rules (40 CFR 268.3). In addition, dilution would be inconsistent with the Congressional mandate to treat rather than dilute toxic wastes and the purpose of this rule (e.g., to encourage treatment of listed wastes). Thus, today's proposed rule specifically prohibits dilution as a means of attaining the exemption levels in accordance with the dilution requirements of the LDR program (see 40 CFR 268). Such prohibition is likewise authorized by section 3004(a)(3), which allows EPA to prescribe treatment methods, techniques and practices as may be necessary to protect human health and the environment.

The Agency considers dilution to be the addition of any other material, either liquid or non-liquid, to increase the volume of a given waste to reduce waste constituent concentrations. For example, the unnecessary addition of non-process waters (e.g., cooling waters) to a wastewater treatment system to achieve exemption levels is a form of inappropriate dilution. Similarly, the addition of clean soil to contaminated soil to achieve exemption levels is another type of prohibited dilution (see 55 FR 22666; June 1, 1990).

The Agency recognizes that many treatment methods require the addition of reagents. These reagents produce physical and/or chemical changes, and do not merely dilute the hazardous constituents into a larger volume of waste so as to lower the constituent concentration. In prohibiting dilution as a substitute for adequate treatment, the Agency does not intend to prevent facilities from adding materials that are necessary to facilitate proper treatment to meet the proposed exemption levels.

A facility claiming an exemption must be prepared to provide justification that these additives are necessary for treatment. Moreover, the facility must be able to show not only that the material is added for purposes other than dilution, but also that the amount added is no more than what is necessary to effect the physical/chemical changes. The facility must have this justification available on site and ready at all times for inspection by the Agency or State officials. For example, consider a facility which is conducting lime stabilization on existing hazardous lagoon sludge using 40 percent lime and has demonstrated that the resultant stabilized material meets the exemption concentrations. This facility must have evidence to demonstrate that the 40 percent lime mixing ratio is required and that a significantly smaller mixing ratio (such as 10–20 percent lime) would not work as effectively.

XI. Implementation

A. Overview

As discussed above, there are two different structural approaches in today's rule: (1) The ECHO approach, which would unify entry and exit levels for subtitle C and (2) the CBEC approach, which alternatively would establish a generic exit from subtitle C. In addition, the Agency is proposing a "contingent management" approach, which could be combined with either ECHO or CBEC to provide an additional exit for subtitle C hazardous wastes that are managed under conditions which the Agency determines to be protective. These approaches raise different implementation issues.

1. ECHO

The ECHO approach would expand the current hazardous waste characteristics and set uniform entry

and exit concentration levels for subtitle C jurisdiction. The ECHO approach thus would be implemented through the current subtitle C regulations.

As is currently required, generators would be responsible for determining whether their wastes are characteristically hazardous. This could be done either by testing the wastes according to the methods set forth in subpart C of 40 CFR part 261, or by applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used. See 40 CFR 262.11l. Wastes exhibiting a hazardous characteristic would be subject to all applicable subtitle C regulations. Generators of wastes which become newly regulated as hazardous wastes under the ECHO criteria would be required to submit notifications of hazardous waste management activity using EPA form 8700–12.

As a result of the ECHO approach, some wastes currently under subtitle C jurisdiction would no longer be regulated under that program. It will be important for the Agency to have information regarding what wastestreams are exiting the system to oversee the transition to the new jurisdictional criteria. The Agency will also need this information to appropriately adjust its compliance monitoring program to account for changes in the status of generators that previously had notified of hazardous waste management activity. Therefore, if the ECHO approach is chosen, the Agency would require generators of what had been listed wastes that are exiting the subtitle C system as a result of ECHO to test their wastes for all Appendix VIII constituents and to submit to the Regional Administrator a one-time notification and certification that their wastes do not exhibit hazardous waste characteristic. Generators of listed waste as of the effective date of ECHO will continue to be subject to subtitle C regulations until the Agency receives the notification that the waste does not exhibit a characteristic. (Wastestreams newly regulated as a result of ECHO and new wastestreams generated after the effective date of ECHO would not be subject to the mandatory one-time testing and notification requirement, but would have to notify under EPA form 8700–12.) This notification could require various types of information. A more detailed discussion of ECHO of the implementation, including the testing requirement and proposed notification and certification, is set forth below.

2. CBEC

The CBEC option would establish a baseline set of constituent-specific exemption levels for waste and contaminated media. Wastes and media with hazardous constituent concentrations below the baseline exemption levels would be conditionally exempt from subtitle C.[6] As an exemption program for wastes which the Agency has determined are hazardous, but not at levels of regulatory concern, certain requirements would be imposed in order to ensure the eligibility of the wastes for the exemption. These requirements would differ from the requirements which currently exist to determine entry into the subtitle C system (and which would continue to apply should the existing characteristics be expanded under ECHO). These requirements would be considered necessary to ensure that only those hazardous wastes which truly met the exemption criteria exited the subtitle C system.

The Agency is proposing that CBEC exemptions be self-implementing. No Agency review of sampling plans or data, or prior Agency approval, would be required before wastes or media could be managed as nonhazardous. The Agency is proposing sampling, testing, notification and recordkeeping requirements as conditions that must be met by a generator to qualify for the generic exemption.

The Agency is proposing that, to claim a CBEC exemption, wastes and media must be sampled and tested annually for the first two years.[7] Thereafter, a waste or media need only be tested every three years. In the first year, the waste or media must be tested for all 200 of the exemption list constituents. In subsequent years, a waste or media need only be tested for those constituents which were detected during the previous year of testing. Additional testing would also be required whenever process changes occur that could affect waste or media composition. All 200 of the exemption list constituents would need to be tested for after such a process change, unless the generator can demonstrate and document a reasonable basis for testing for a more limited number of constituents. Generators may not use their knowledge of the waste or media to determine whether the waste or media is exempt under a CBEC exemption. (Knowledge of the waste could be used as a basis for more limited testing in the event of a process change.) The determination must be based on sampling and analysis that conforms with the data requirements discussed below.

Testing would be done in accordance with a sampling and analysis plan that includes the basic elements of sampling and analysis plans described in Chapter One of SW–846. This would include a detailed description of the planned sampling protocols and equipment, statistical methods to ensure that the samples are representative, quality assurance plans, any expected modifications of the SW–846 analytical methods listed in Appendices [x+1] or [x+2] and, as applicable, proposed analytical equipment, etc.

A generator claiming a CBEC exemption would submit to the Regional Admininstrator (or authorized State) an initial notification of that claim and a certification stating that the information contained in the notification is complete and accurate. The exemption for CBEC waste or media would become conditionally effective as of the date that the Regional Administrator receives, via certified mail with return receipt, the facility's notification and certification.

Generators would retain the following documentation on-site for at least three years after the date of notification: a copy of the notification and certification; the sampling and analysis plan, a sampling record that supports all sampling events and demonstrates that the samples are representative of the temporal and spatial variability of the waste; and analytical laboratory results for all samples.

Generators claiming a CBEC exemption would be required to re-test and re-submit their waste or media notifications and certifications annually for the first two years, and every three years thereafter. Should a change in process occur that could affect waste or media composition, generators also would be required to re-test and submit a new notification and certification reflecting the process change.

Generators would have to meet all of the applicable conditions to qualify for the CBEC exemption. The Agency is proposing that any misrepresentation, erroneous demonstration, or incomplete adherence to the conditions would make the waste or media ineligible for the exemption and the waste or media would thus be subject to all subtitle C management requirements. Even if the exempted waste or media is the only

[6] Exempted wastes would continue to be solid wastes, and as such would require proper management under subtitle D. Further, this generic cut-off would set a level at which media was no longer contaminated with a listed hazardous waste.

[7] Note that this requirement would not apply to generators claiming exemptions for waste or media that are generated or managed on a one-time basis.

hazardous waste generated by the facility, the facility will retain its EPA identification number and is subject to all applicable hazardous waste regulations if the exempted waste or media reverts to a hazardous waste through reconstitution, treatment, process upsets or changes, or any other reason.

3. Contingent Management Exemptions

The contingent management exemption would apply to wastes and contaminated media with hazardous constituent concentrations greater than the ECHO or CBEC constituent concentration levels, but less than or equal to a second higher set of constituent-specific exemption levels. These wastes and media would be conditionally exempt from subtitle C requirements so long as they are managed in accordance with the management practices being proposed today. Wastes and media meeting these "contingent management" levels and that are not managed in accordance with the specified management practices would be hazardous wastes subject to full subtitle C jurisdiction.

The Agency is proposing that the contingent management exemption be self-implementing. No Agency review of sampling plans or data, or prior Agency approval, would be required before wastes or media could be managed under contingent management conditions.

The Agency proposes that the contingent management exemption would be conditioned upon three requirements: (1) sampling and testing according to the same standards as those that would apply for the CBEC exemption; (2) submittal (and re-submittal) of the same notification and certification as would be required for the CBEC exemption; [8] and (3) disposal of the waste in accordance with the management standards established by this rule.

Because a contingent management exemption is conditioned on the proper management of the waste or media—*i.e.*, disposal in accordance with specific management standards—the Agency is proposing that the exemption would not become effective until the waste or media is actually disposed of in accordance with the management standards (*e.g.*, when wastes or media enter a qualifying disposal unit). The waste or media, therefore, must be managed as a subtitle C hazardous waste from the point of generation until disposal. It would be subject to all of the applicable RCRA requirements. This includes 40 CFR parts 262 and 263, which contain, among other provisions, the manifest, waste accumulation and export provisions. Furthermore, the receiving facility would have to manage the candidate exemption waste or media as a hazardous waste if it cannot dispose of the waste or media without prior storage.[9]

This implementation structure is intended to help ensure safe management of the waste or media prior to satisfaction of the condition justifying the exemption. For example, if a candidate waste was spilled during transport it would be a hazardous waste because disposal did not occur in a qualifying unit. The Agency, therefore, believes that it would be important to impose the same controls on transport of the candidate second tier exemption waste as would be imposed on transport of the same waste if it was destined for a subtitle C facility. The Agency also believes that continuing to mange the candidate exemption waste as hazardous prior to disposal provides a simple implementation structure. For example, rather than setting up two alternative waste tracking systems, generators would be able to utilize a single form. Use of the manifest also helps to minimize conflicts that may arise if waste moves through states which have not adopted the contingent management exemption.

The generator would have the burden of demonstrating that all of the conditions for the contingent management exemption described above have been met. In an enforcement action, a waste or media for which an exemption is claimed would be considered a subtitle C hazardous waste unless the generator was able to produce evidence that all of the conditions of the exemption have been met. Failure of a disposal facility to manage candidate exemption wastes in accordance with the management standards would also nullify the exemption. In such instances, the waste would remain a hazardous waste and the facility would become a subtitle C treatment, storage, and disposal facility.

B. Implementation of the ECHO Approach

The ECHO approach would expand the current hazardous waste characteristic approach to subtitle C jurisdiction. Wastes determined to be hazardous under the ECHO approach would be subject to all applicable subtitle C regulations to the same extent that characteristic hazardous wastes are currently subject to subtitle C regulations.

ECHO would establish no new requirements for characteristically hazardous wastes than currently exist, except for the testing and one-time notification discussed below. Generators bear the responsibility to ensure that their waste determination is accurate. As long as the generator manages the waste as nonhazardous, the generator must be able to demonstrate that the waste does not exhibit a characteristic. As with other characteristics, generators may rely on test results, knowledge of the waste, or some combination of the two methods. Under ECHO, generators would not be required to test their wastes (except for generators of listed wastes subject to the onetime notice) or retest periodically or in the event of a process change. The current regulatory requirements and the operational practices of transporters and TSDFs assume that legal liability encourages generators to test their wastes whenever there is reasonable uncertainty that the waste exhibits a hazardous waste characteristic. Although the Agency recommends that generators of characteristic waste re-test after any process change which may affect the hazardous composition of a waste, the Agency recognizes that the hazardous waste characteristics apply to a wide range of waste streams. With such a wide variety of streams regulated under the characteristic, the Agency believes that there may be some waste streams for which process knowledge may be sufficient to determine if a waste exhibits a characteristic.

As now, under ECHO the Agency would encourage generators to conduct and document their sampling and analysis of their waste, if conducted, in light of the possible legal liability. However, the Agency does not now require generators to document the sampling and analysis that informed their waste management decisions and would not do so under ECHO. As now, under ECHO generators would have the flexibility to determine the appropriate level of sampling, analysis, and documentation for their waste determinations.

[8] Contingent management exemption claimants would also be required to resubmit the notification and certification whenever there is a change in the identity of the disposal facility receiving the waste or media.

[9] The Agency is proposing to amend 40 CFR 264.1 to allow facilities disposing of contingent management wastes (and solid wastes) to store contingent management wastes for up to 10 days without becoming a subtitle C treatment, storage, and disposal facility. The Agency requests comment on whether 10 days is a sufficient or appropriate length of time, and if not, what time period may be appropriate.

As discussed above, under the ECHO approach some wastes currently regulated under subtitle C would exit that system. The Agency is proposing that generators of wastestreams that had been considered listed wastes but which would no longer be hazardous waste under ECHO be required to analyze their wastes for all Appendix VIII constituents and submit to the Regional Administrator one-time notifications of the change in the regulatory status of their wastes and certifications that their wastes do not exhibit a hazardous waste characteristic. Facilities for which only some waste streams would exit subtitle C and which would still continue to manage some hazardous waste would still be required to submit this notification and certification. The Agency is proposing that testing for the one-time notification be conducted according to the methods set forth in subpart C of 40 CFR part 261.

Under this proposal, generators of listed wastes as of the effective date of ECHO would remain subject to subtitle C jurisdiction until the Agency received the notification. Thus, for those generators, ECHO would operate as a conditional exclusion. Generators of wastes that become newly regulated as a result of ECHO and generators of new wastestreams after the effective date of ECHO would not be subject to the one-time testing and notification requirement, but would be subject to the waste determination requirement of 40 CFR 262.11 and would be required to notify the Agency if they were managing a hazardous waste, using EPA form 8700–12. ECHO would not operate as a conditional exclusion for those generators.

The Agency is proposing that the notification include the following information: (1) The name, address, and RCRA ID number of the facility; (2) the EPA hazardous waste code applicable to the waste; (3) the characteristics and constituents for which the waste was evaluated under the ECHO criteria; and (4) the constituent concentrations in the waste which form the basis for the claim that the waste is not characteristically hazardous.

The notification would be accompanied by a certification by a responsible corporate officer that the information contained in the notification is complete and accurate. The Agency requests comment on whether the notification and certification should also be required of generators of wastes currently considered to exhibit the toxicity characteristic, if under ECHO the constituent concentration levels change such that the waste would no longer be considered to exhibit the toxicity characteristic.

It should be noted that units managing wastes that would no longer be hazardous under the ECHO criteria would continue to be regulated hazardous waste management units subject to the requirements of parts 264 and 265, including the closure requirements. A unit receiving only waste that is shown not to be a hazardous waste under the ECHO criteria would no longer be receiving hazardous waste upon the effective date of the ECHO criteria and thus normally would become subject to subtitle C closure requirements. How closure requirements would apply to these units is discussed in section XIII.E.

ECHO also may bring new wastes into the subtitle C system. Generators of wastes which become newly regulated as hazardous wastes under the ECHO criteria would be required to submit section 3010 notifications of hazardous waste management activity using EPA form 8700–12 and obtain EPA identification numbers. Newly regulated facilities, *i.e.*, facilities at which the only hazardous wastes that are treated, stored, or disposed are wastes newly regulated under ECHO) will have to qualify for interim status by the effective date of the rule in order to continue managing wastes that become newly hazardous prior to obtaining a permit. To obtain interim status, eligible facilities will have to submit section 3010 notifications by the effective date of the regulation and part A applications by no later than six months after publication of the final ECHO rule. To retain interim status, a newly regulated facility will have to submit a RCRA permit application within one year after the effective date of the rule and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements (*see* RCRA Section 3005(e)(3) and 40 CFR 270.73(d)). Permitted and interim status facilities which manage a solid waste that is newly defined as hazardous waste as a result of ECHO will have to submit Class 1 permit modification requests or part A permit application revisions to EPA. Facilities will to have to manage these wastes in accordance with 40 CFR part 265 or 40 CFR part 264 until permit modification or issuance, depending on whether the waste is managed in a newly regulated or previously regulated unit.

C. Implementation of the CBEC Approach

1. Sampling Requirements for CBEC Exemptions

In today's notice, as an alternative to ECHO, the Agency has proposed concentration-based exemption levels at which a solid waste or media would not be considered hazardous. To ensure that facilities accurately characterize constituent concentrations in their wastes, the Agency is proposing a series of sampling and analytical requirements to be imposed upon persons seeking CBEC exemptions that would be codified in Appendix (x+3) to 40 CFR Part 261. These requirements are viewed as the minimum necessary to make a CBEC exemption determination. Following these requirements, however, does not imply that the determination will be adequate. It is ultimately the responsibility of the generator to ensure that the sampling and analysis is accurate and representative of its wastes.

Changes in waste composition or leaching characteristics. At any time where there is a process or other change which may affect waste composition or leaching characteristics, the facility would be required to re-characterize the waste and determine that the waste continues to meet the applicable exemption levels before disposing of the waste as non-hazardous. Results would be retained documenting the process, or other changes, the testing undertaken, and the resulting changes in waste composition. Should the results indicate that the waste does not meet the applicable exemption levels, that waste, and any subsequently generated wastes, would be required to be managed as a hazardous waste until the generator notifies the Regional Administrator that the operating and/or waste management process produces waste meeting the exemption criteria. Although the Agency believes it is important that any process change that could affect the ability of the waste to qualify for a CBEC exemption be evaluated, it is also very difficult to define or quantify what process changes would affect waste composition or leaching characteristics. Not all process changes would necessarily affect waste composition. The Agency has not yet developed regulatory language which better defines the process changes which would nullify a CBEC exemption and require retesting, renotification and recertification. The Agency requests comment on how best to describe such a process change in the regulations. The Agency notes that, because testing is not required to

determine entry into subtitle C, and thus there are no re-testing requirements, the Agency would not have to define "process change" if the ECHO approach is chosen.

The facility will also be held liable for any changes in the waste after generation which may cause the waste to revert to a hazardous waste. For example, if an exempted waste were managed in such a manner that it becomes more concentrated over time (e.g., reconstitution) due to evaporation or other factors, the facility is responsible for determining that the waste continues to meet the exemption criteria.

Data evaluation. The Agency is proposing that, for CBEC exemptions, facilities would be required to evaluate their wastes, contaminated media or materials based on the maximum detected concentrations of the exemption constituents. This conservative approach is consistent with the delisting program's general approach to evaluating wastes petitioned for exclusion. While the Agency believes that this approach is the most appropriate approach for a self-implementing exemption program, the Agency is also taking comment on whether to evaluate analytical results in terms of average concentrations or some other data evaluation mechanism (e.g., at some confidence interval). For example, in determining whether a waste exhibits a hazardous waste characteristic, chapter 9 of SW–846 requires the use of the upper limit of the 80% confidence interval for the mean. In addition, the Agency solicits comments on implementable techniques for the identification of analytical outliers.

Sampling and analysis plan. The Agency is proposing that all facilities seeking a CBEC exemption prepare a sampling and analysis plan. In general, the sampling and analysis plan must demonstrate that the samples to be taken and analyzed will be representative of any spatial and temporal variations in the exemption-candidate waste or media. The facility would be required to repeat the sampling and analysis demonstration according to the frequency set forth in the regulations. More frequent sampling will be necessary should there be any significant changes in the production or waste treatment process or when the minimum sampling requirements are insufficient to be representative of the waste. The sampling and testing burden for facilities that routinely change their production processes, e.g., by changing chemical feedstocks, will be greater than for a facility with a stable and consistent process. The specific requirements being proposed for sampling and analysis plans would be codified in Appendix (x+3) to 40 CPA part 261.

The sampling and analysis plan would have to demonstrate that sampling will be representative of routine changes in production processes and/or treatment processes both during a specific sampling event and across all operating conditions. The sampling and analysis plan would also have to address any process upsets or other factors which may affect waste or media composition or leaching characteristics. The Agency believes that an adequate determination will generally need to include more than the minimum sampling requirements to provide a fully representative demonstration of the composition and leaching characteristics of the candidate waste or contaminated media.

Each time the facility samples the subject waste or media, the facility or its agent would be required to document that the sampling and analysis plan has been followed. Problems encountered during the sampling event, and corrective measures taken to ensure the integrity of the process, must be documented and retained for at least three years. See discussion of recordkeeping at section XI.E.

2. Testing Requirements for CBEC Exemptions

Facilities would be required to use the analytical procedures described in SW–846, 3rd edition when analyzing their wastes or contaminated materials for exemption determinations. To use equivalent procedures to SW–846, a claimant must petition the Agency in accordance with 40 CFR 260.21. Due to the wide variation in the occurrence and concentration of hazardous constituents in wastes and contaminated materials, each generator would be required to test each waste or material for which they seek a CBEC exemption for all of the exemption list constituents. In addition, the facility would not be able to make the determination that a listed hazardous waste or contaminated material meets the exemption levels based on his knowledge of the waste or material.

The Agency is requesting comment on the appropriateness of requiring analysis for all 200 constituents for the first year the exemption is claimed, and requiring analysis in subsequent demonstrations for only those constituents previously detected. The Agency is proposing this approach because it believes that there is a heightened need to ensure that wastes leaving the hazardous waste management system do not contain any hazardous constituents above the applicable exemption levels. The Agency believes that this approach balances the need for a comprehensive and objective basis for waste management decisions with the need to make the exemptions practically available to generators of waste that meet the appropriate exemption levels.

There could be other ways to balance the above concerns. One option would be to require analysis for all 200 constituents every year the exemption is claimed. This approach is very comprehensive and favors the need to ensure continued applicability of the waste management decision, but may impose a practical barrier to generators who might otherwise be eligible for the exemption. Comment is requested on whether the information that would be gathered through annual testing for all 200 constituents is necessary to ensure continued applicability of the exemption. Comment is also requested on what the burden of requiring annual testing for all 200 constituents might be for generators.

Another option is for EPA to define, in regulations, for major waste streams, a set of constituents that it believes would fairly characterize those waste streams. EPA believes such an approach may be desirable in the long term to reduce costs, especially in industries with large numbers of generators. EPA asks for comment on the feasibility, or need, for this approach in the long term. The Agency notes that this could require it to expend significant resources. The Agency requests comment on whether such knowledge will arise as these programs are implemented and transporters impose their own requirements.

Yet another option would be to allow the generator to use process knowledge to determine which exemption constituents are likely to be present in their waste and test for those constituents. This option would minimize the potential barrier that testing might pose for generators seeking an exemption, but could be less comprehensive. Comment is requested on whether process knowledge provides a sufficiently objective and comprehensive basis for determining which constituents to test for. This approach is comparable to the system under the ECHO approach. This system relies on the substantial threat of civil liability, including CERCLA liability, to encourage generators to ensure that their wastes either are not characteristically hazardous under ECHO or ineligible for CBEC. The

Agency requests comments on other options as well.

The Agency is proposing the Toxicity Characteristic Leaching Procedure (Method 1311) as the method to model concentrations of hazardous constituents found in waste and soil extracts. TCLP extract concentrations will be compared to the levels specified in appendix [x+2]. These exemption determinations must be based solely on the results of testing. The Agency is asking for comment on whether both total compositional and leachate analysis for all of the exemption constituents be conducted on all soil samples. As discussed in Section VIII, the Agency is also taking comment on the Synthetic Precipitation Leaching Procedure (Method 1312) as an appropriate protocol for modeling concentrations of hazardous constituents in soil extracts for exemption determinations. The facility would have to demonstrate that concentrations of hazardous constituents found in the subject contaminated soil and in its Method 1312 leachate are below the levels specified in appendix [x+1].

As part of the record, generators must retain analytical results on site for at least three years. See discussion of recordkeeping at section XI G. These results, as well as any other required document, would have to be submitted to the Regional Administrator upon request. At a minimum, analytical reports must include the following: (1) The name and address of the laboratory performing the waste analyses; (2) the names and qualifications of persons performing analysis; (3) date of analysis; (4) description of sample preparation techniques used for extraction of the samples; (5) a description of the tests performed, testing results, and quality assurance/quality control (QA/QC) documentation; and (6) the names and model numbers of the instruments used in performing the tests. The specific QA/QC requirements associated with the specific methods listed in Appendices [x+1] and [x+2] must also be followed.

The Agency requests comments on whether the Agency should require that all CBEC exemption analyses be conducted by independent laboratories as an added assurance of the validity of test results. The Agency also requests comment on whether it should require facilities to analyze spiked samples prepared by EPA laboratories on a periodic basis as a means of measuring the qualifications of the facility's laboratory, and what the costs of such a requirement might be for the Agency and the regulated community. The Agency also seeks comment on other analytical options aimed at ensuring the accuracy and validity of exemption determinations.

3. Notification Requirements

To qualify for a CBEC exemption, a generator would need to submit to the Regional Administrator a formal notification of its claim that wastes or media are nonhazardous as a result of the concentration-based exemption criteria. The notification would be required to include an accompanying certification by a responsible corporate officer that the information contained in the notification is complete and accurate.

Generators continuing to generate or otherwise manage waste or media for which they continue to claim a CBEC exemption would be required to re-submit the notification and certification (and retest the waste or media) annually for the first two years an exemption is claimed. Thereafter, re-submittal of the notification and certification (and retesting of the waste or media) would be required once every three years and when changes occur to the process that could affect waste or media composition.[10] The Agency is proposing this schedule of testing as a means to ensure continued applicability of the exemption through periodic "checks" on the data. The Agency is taking comment on whether this schedule is sufficient or unnecessary to accomplish this goal, and on what other schedules of testing could provide assurance of continued applicability of the exemption. The Agency is asking for comment on whether re-testing and re-submittal of the notification and certification should be required more or less frequently than the schedule proposed today. The Agency is also requesting comment on whether re-testing and re-submittal of the notification is necessary at all.

The absence of either a re-submittal or appropriate re-testing would breach the procedural conditions upon which the exemption is based; without a re-submittal and appropriate re-testing the waste or media would be considered a hazardous waste and subject to subtitle C requirements. If a generator finds that the exempted waste or media no longer meets the exemption criteria, the generator immediately must comply with all applicable requirements for generators of listed wastes, or for owner/operators of treatment, storage, or disposal facilities, under 40 CFR 262–270 (including renotification of hazardous waste management activity using EPA form 8700–12).

The Agency is taking comment on whether generators should be required to submit their sampling and analysis plans and analysis data to the Agency prior to the effective date of their exemptions. Pre-submission of the sampling and analysis plan and the analysis data could be coupled either with a program that would require prior Agency approval before implementation of an exemption claim or with a more self-implementing approach. Under a more self-implementing approach, the sampling and analysis plan would be required to be sent to the Regional Administrator, but a generator could proceed to test according to the sampling and analysis plan unless it was otherwise notified by the Regional Administrator after a set time (for example, 60 days after Agency receipt of the plan). After testing, the facility would submit the data to the Regional Administrator. The exemption would become conditionally effective a set time (*e.g.*, 60 days) after Agency receipt of the data, unless the facility was otherwise notified by the Regional Administrator. The Agency is taking comment on whether this approach would discourage generators from taking advantage of the exemption, for example due to the time periods associated in obtaining the exemption. The Agency also requests comment on whether the time periods associated with this approach would result in a substantial amount of low risk waste being disposed of in subtitle C facilities that would otherwise be eligible for an exemption.

Comments are also requested on whether generators that have successfully determined that their wastes are nonhazardous under the concentration-based exemption criteria should be required to notify off-site facilities that they are delivering exempted wastes to those facilities. Similar notices are required by the land disposal restrictions program for the delivery of certain hazardous wastes to landfills (*e.g.*, 40 CFR 268.7(a)(2)).

4. When CBEC Exemptions Become Effective

The Agency is proposing that CBEC exemptions become conditionally effective for wastes and media upon receipt of the notification and certification by the Regional Administrator (or the authorized State official). The Agency is also proposing that facilities submit their notifications

[10] The renotification and recertification requirements would not apply to facilities submitting notifications for wastes or media that are generated or managed on a one-time basis.

and certifications by certified mail with return receipt to serve as evidence that the Agency has received the package.

The Agency is proposing that any misrepresentation, erroneous demonstration, or incomplete adherence to the above conditions would make the waste ineligible for the exemption and the waste would thus be subject to all Subtitle C management requirements. If the generator fails to support a CBEC exemption claim with accurate analytical data, complete sampling plans, and signed certifications, and/or any other procedural requirement, the Agency will consider the demonstration invalid and the waste or media to be a listed hazardous waste.

The Agency is taking comment on whether the Regional Administrator should have the authority to require additional analysis, such as quantitation to non-Appendix VII constituent exemption levels, or to evaluate factors not considered in the exemption criteria, such as aquatic impacts, additive effects, or food chain considerations. The Agency recognizes that broad exemption criteria such as the CBEC exemption criteria proposed today may not, in isolated cases, address all critical risks. Thus the Agency requests comment on granting omnibus authority to the Regional Administrator (or authorized State official) to consider other factors that may cause a CBEC exemption waste to remain hazardous, when necessary to protect human health and the environment. The Agency requests comment on what the potential costs of implementing this authority may be for both the regulated community and the Agency.

The Agency is also requesting comment on how, procedurally, the Regional Administrator (or authorized State official) would exercise this omnibus authority. Under today's proposal, CBEC exemption claims would become effective upon notification and certification of the claim, but data would not be submitted to the Regional Administrator for review unless requested. One way the Regional Administrator could be able to exercise the omnibus authority would be to establish a new variance procedure similar to that at 40 CFR 260.40 and 41, which set forth criteria and procedures for Regional Administrators to impose additional requirements on persons accumulating or storing certain recyclable materials that would otherwise be exempt from regulation. It should be noted that these procedures place the burden on the Regional Administrator to demonstrate the necessity of exercising the variance. The provisions at 40 CFR 260.40 and 41 set forth, among other requirements, procedures for providing facilities with notice of the basis for the decision and allow the facility 30 days to respond. The procedures also provide an opportunity for a hearing, and for appeal of the decision to the Administrator. In addition to the kind of procedural requirements required at 40 CFR 260.41, the Agency could require that Regional Administrators must either consult with or obtain prior approval from the Administrator before sending a notice to an exemption claimant. This provision, however, could conflict with the ability to appeal a decision to the Administrator. A final decision to impose additional requirements through the omnibus authority would apply prospectively only. The Agency requests comment on this and any other procedural mechanism for the exercise of omnibus authority by the Regional Administrator (or authorized State official).

D. Implementation of the Contingent Management Exemption

1. Sampling Requirements for Contingent Management Exemptions

The Agency is proposing that the sampling requirements for the contingent management exemption be exactly the same as those proposed for the CBEC exemption. This is proposed for the contingent management exemption, regardless of whether it is combined with the ECHO approach or the CBEC approach. The Agency requests comment on whether the sampling requirements for the CBEC exemption would still be appropriate if combined with the ECHO approach.

2. Testing Requirements for Contingent Management Exemptions

The Agency is proposing that the testing requirements for the contingent management exemption be exactly the same as those proposed for the CBEC exemption. This is proposed for the contingent management exemption, regardless of whether it is combined with the ECHO approach or the CBEC approach. The Agency requests comment on whether the testing requirements for the CBEC exemption would still be appropriate if combined with the ECHO approach.

3. Notification Requirements for Contingent Management Exemptions

To qualify for a contingent management exemption, under either the ECHO or the CBEC approach, a generator would need to submit to the Regional Administrator a formal notification of its claim that wastes or media are nonhazardous as a result of the specific type of management it will receive. The notification must include an accompanying certification that the information contained in the notification is complete and accurate. The Agency is proposing that Agency receipt of the notification and certification be one of three conditions that must be met before wastes media can be managed as non-hazardous under the contingent management exemption. The Agency is also proposing that facilities submit their notifications and certifications by certified mail with return receipt to serve as evidence that the Agency has received the package.

Generators continuing to generate or otherwise manage waste or media for which they continue to claim a contingent management exemption would be required to re-submit the notification and certification (and retest the waste or media) with the same frequency and under the same conditions as is being proposed for CBEC exemptions. In addition, generators would have to submit new notifications and certifications when the identity of the disposal facility changes. If a generator finds that the exempted waste or media no longer meets the constituent concentration levels applicable for the contingent management exemption, or that the management standards at the receiving facility can no longer be met, the generator must comply with all applicable requirements for generators of listed wastes (including disposal of waste at a subtitle C facility) and owner/operators of treatment, storage, and disposal facilities under 40 CFR 262–270 (including renotification of hazardous waste management activity using EPA form 8700–12).

As with CBEC exemptions, the Agency is taking comment on whether generators claiming contingent management exemptions should be required to submit their sampling and analysis plans and analysis data to the Agency prior to the effective date of the exemption. The Agency is also asking for comment on whether re-testing and re-submittal of the notification and certification should be required more or less frequently than the schedule proposed today. The Agency is also requesting comment on whether re-testing and re-submittal of the notification is necessary at all.

4. When Contingent Management Exemptions Become Effective

The Agency is proposing that the conditional exemption for "contingent

management" wastes and media would not become effective until all three conditions of the exemption have been met: (1) notification and certification (similar to what would be required for first tier exemptions); (2) sampling and testing (as required for first tier exemptions); and (3) the waste or media is managed in accordance with the management standards established by this rule.

Prior to actual disposal, the waste would be managed as a hazardous waste according to all applicable RCRA provisions, including 40 CFR parts 262 (for generators) and 263 (for transporters). These requirements include compliance with the waste manifest provisions of 40 CFR part 262, subpart B, and the pre-transport provisions of 40 CFR part 262, subpart C, which contains, among other provisions, the provisions governing hazardous waste accumulation.

The Agency is proposing this approach to simplify implementation and to ensure safe management of the waste prior to satisfaction of the conditions for exemption. It is consistent with an approach under which a waste only ceases to be a hazardous waste if its ultimate disposal conforms to the requirements of this rule. It also decreases the potential implementation concerns that may arise if some states adopt this rule as part of their authorized programs and others do not. For example, this approach would reconcile transportation concerns that could arise if waste conditionally exempt in one state is transported through a state that has not adopted the contingent management exemption as part of its authorized program.

The Agency is taking comment on alternative approaches for when the exemption could become conditionally effective for contingent management exemption wastes. One alternative could be to have the conditional exemption become effective, for wastes or media being disposed of off-site, upon placement of the waste in a transportation vehicle that is designated to transport the waste to a facility eligible to handle contingent management exemption wastes. The Agency is taking comment on what pre-transport and transport requirements would be necessary to ensure that the waste or media is managed safely prior to disposal in the qualifying unit.

Under the above approach, contingent management exemption wastes or media being disposed of on-site would still not become exempt until placed in a disposal unit meeting the requirements established under this rule. Under the waste accumulation provisions of 40 CFR 262.34, a generator may store hazardous waste on-site in tanks or containers for 90 days without becoming a Subtitle C storage facility.

Comment is requested on whether, under the "placement in the vehicle" alternative or any other alternative that does not rely on the manifest system, the generator should have a responsibility to inform an off-site receiving facility of the nature of the waste, and whether the generator should also be required to maintain documentation demonstrating that the receiving facility had been informed of the nature of the waste.

Under an alternative that would not rely on the current manifest system, comment is requested on whether a generator should have to demonstrate that the contingent management exemption waste was actually received by the off-site destination facility and how that receipt could be demonstrated. EPA also seeks comment on mechanisms to inform EPA (or the authorized State) if a "contingent management" exemption waste does not actually arrive at its designated receiving facility. One approach might be to impose requirements similar to the 40 CFR 262.42 exception reporting provisions. The Agency seeks comment on this approach and other options for accomplishing the same goal.

Another alternative for satisfying the management requirement in the absence of a manifest could be to allow, in lieu of a tracking document, a demonstration kept in the facility's records of a contractual agreement with the receiving facility which specifies type of waste or media, volume, and frequency of deliveries. This document could also satisfy a requirement that a generator inform a receiving facility of the nature of the waste or media.

The Agency specifically requests comment on whether transportation companies transporting contingent management wastes from generators to disposal facilities would require generators to provide documentation and certification independently of federal regulation.

The Agency is taking comment on these and any other alternatives for when a contingent management exemption becomes effective. As with CBEC exemptions, the Agency is also taking comment on whether the Regional Administrator should have the authority to require additional analysis or to evaluate factors not considered in the exemption criteria, and what procedures he should use to do so.

5. Duty of a Generator Claiming a Contingent Management Exemption to Manage Waste in Accordance With the Management Standards of the Exemption

Today's proposal requires that, in order to claim a contingent management exemption, a generator must manage the waste or media for which the exemption is claimed in accordance with the standards established by this rule. To satisfy this condition, the generator must ensure that the waste or media is actually disposed of at the facility designated in the notification as the receiving facility and in units satisfying the management standards under this rule. The burden of satisfying all conditions for the exemption falls on the generator as the person in the best position to determine eligibility of a waste or media for an exemption and to ensure informed waste management decisions. The generator is also in a position to enter into contractual arrangements with receiving facilities to allocate responsibility for satisfaction of the conditions among themselves. It should be noted, however, that facilities disposing of contingent management exemption wastes could become subtitle C treatment, storage and disposal facilities should they dispose of the wastes in units that do not comply with the management standards established for the exemption.

A contingent management exemption waste or media will be considered a hazardous waste until all of the conditions required for the exemption have been met. The generator will have the burden to demonstrate satisfaction of all of the conditions, including demonstrating that the waste or media actually was disposed of in a unit or units qualifying for management of contingent management exemption wastes.

Comment is requested on whether the condition that generators must manage second tier exemption waste or media in the manner set forth in the proposed rule is sufficient to put a generator on notice of his obligations and potential liabilities, and if not, what requirements or conditions would be necessary to accomplish that.

One alternative for how the rule could provide greater notice on how generators can comply with the contingent management exemption criteria would be to set out in the rule certain documentation that, while not necessarily required of generators, presumptively would be sufficient evidence of satisfaction of the management condition. Of course, EPA

could rebut this presumption regarding actual disposal through evidence that the generator's documentation is deficient or inaccurate. Generators might be able to develop rebuttable evidence of off-site disposal by having a returned manifest and documentation that the generator inquired as to the capability of a facility to dispose of second-tier candidate waste in accordance with the management standards and by having written documentation from the receiving facility with sufficient specificity to establish confirmation of its capacity to manage the waste in accordance with the exemption standards. For rebuttable evidence of actual on-site disposal, such documentation could consist of certifications by independent, qualified, registered professional engineers that units at the facility meet the management standard and operating logs indicating the identity of the waste, the date of generation, the volume generated, the manner of storage after generation, and date and volume disposed of in the qualifying management unit.

The Agency is taking comment on whether establishing certain evidentiary standards would provide useful guidance to generators on how to satisfy the management condition and provide helpful incentive for generators to maintain proper documentation of their exemption claims. Comment is also on whether the documentation discussed above, or other documentation, would be necessary or sufficient to accomplish the purpose of demonstrating compliance with the management condition.

Comment is also requested on whether any additional conditions or requirements, substantive or procedural, should be imposed on generators claiming a contingent management exemption to ensure that the contingent management exemption waste or media is actually managed in accordance with the management standards. Comment is further requested on whether, as opposed to the proposed approach, the regulation should provide that generators claiming a contingent management exemption are liable only if they have falsely certified or made an inaccurate waste determination or inappropriate selection of off-site facilities for disposal.

E. Recordkeeping Requirements for ECHO, CBEC Exemptions and Contingent Management Exemptions

Under the ECHO proposal, generators submitting notifications and certifications that certain wastestreams are no longer hazardous wastes under subtitle C would be required to maintain copies of the notification and certification in their facility files for three years after Agency receipt of the notification and certification.

Generators claiming a CBEC or contingent management exemption would be required to maintain on-site, for at least three years after Agency receipt of the notification and certification, all documentation required under this rule including, but not limited to, the sampling and analysis plan and test data and the accompanying notification and certification.

The Agency requests comment on alternative record retention periods such as 5 years, which corresponds to the applicable statute of limitations period at 28 U.S.C. 2462. Owners and operators would be required to retain such documentation in their operating records until closure of the facility. The documentation must be available for review by the Agency or an authorized State at the time of site inspection. The three-year generator record retention period will be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Regional Administrator.

F. Compliance Monitoring and Enforcement for ECHO, CBEC Exemptions, and Contingent Management Exemptions

If the ECHO approach is chosen, the Agency may choose to implement a stepped-up compliance monitoring program and enforcement program to oversee the transition to the new jurisdictional criteria. While ECHO would continue to provide generators with the flexibility currently embodied in the RCRA regulations for hazardous waste determinations, the Agency is concerned that expanding the hazardous waste characteristics could impose a significant new burden on enforcement resources. The Agency will be including the impact that ECHO may have on enforcement resources in its evaluation of this option.

The Agency may also choose to step up compliance monitoring and enforcement of the CBEC and contingent management exemptions, due to their self-implementing nature. The compliance monitoring and enforcement program outlined in this notice focuses on the CBEC and contingent management exemptions because these would be new requirements in the subtitle C system. The program is designed to ensure that the exemptions are being applied in an appropriate manner and that only those wastes and media that are truly nonhazardous are relieved from subtitle C management requirements. Compliance monitoring and enforcement of the ECHO program would be carried out under existing authorities and conditions with which the regulated community should already be familiar.

Generators must comply with all of the previously described conditions of the exemptions to qualify for the exemptions. A generator must manage the waste or media as required under subtitle C during periods when any of those conditions are not met. Generators that fail to comply with the applicable conditions for a CBEC or contingent management exemption risk enforcement action for violations of subtitle C requirements, including administrative, civil and criminal penalties.

1. Compliance Monitoring

The Agency is proposing that compliance monitoring of the ECHO approach, the CBEC exemption, and the contingent management exemption occur through EPA or State oversight, primarily through review of notifications and inspections.

The primary means of oversight likely will be inspections. RCRA section 3007 requires that the Agency and States conduct inspections of TSDFs on a biennial basis. In addition, as a matter of policy, the Agency has increased the number of inspections directed at generators subject to land disposal restrictions requirements. Inspectors will review the notifications for completeness and use those notifications to assist in targeting facilities for inspection.

In addition, EPA and States may do confirmatory sampling and analysis to determine whether a waste or media meets the exemption levels. Inspections of off-site laboratories may also be performed.

2. Enforcement

The CBEC and contingent management exemption criteria proposed today would create two possible exits from the subtitle C system only so long as the conditions established for one or the other exit are met. Failure to comply with any of the conditions for the exemptions would mean that the wastes would not be exempt from subtitle C, and the generator could be subject to immediate enforcement action for violation of subtitle C requirements.

The Agency has the authority under this regulation or RCRA section 3007 to require submission of information on the management of exempted wastes or

media in a situation where the Agency suspects the generator has not satisfactorily determined whether a waste or contaminated materials meet the appropriate exemption levels. Alternatively, the Agency may require improved analysis using an administrative or civil action under section 3008(a). The Agency has the authority, under section 3007 of RCRA, to require submission of information and to conduct inspections of facilities which EPA has reason to believe may be managing a hazardous waste. Under this authority, the Agency would be able to inspect a non-subtitle C facility receiving contingent management exemption waste to determine whether or not the management standards were being met. Failure to manage the contingent management exemption waste in accordance with the required management standards would vitiate the exemption and the conditionally exempt waste would be subject to full subtitle C regulation. The receiving facility, therefore, would become a subtitle C treatment, storage, and/or disposal facility requiring a permit.

In an enforcement action, compliance with the terms and conditions of one of the exemptions may be raised as an affirmative defense, but the burden will be on the defendant to establish eligibility for the exemption and compliance with the conditions necessary to maintain the exemption. See 50 FR 642 (Jan. 4, 1985) for a discussion of EPA's authority to place such burdens on defendants.

Generators may not use either the CBEC or the contingent management exemptions as a means of avoiding enforcement actions. For example, a generator who is the subject of an Agency enforcement action cannot claim that the waste or media in question is exempted from subtitle C under a CBEC exemption unless a valid exemption notification for that waste or media has been previously submitted to the Agency and the required documentation to support the claim exists at the facility and satisfies the requirements of the regulations. Neither the CBEC nor the contingent management exemption can be used in a retroactive fashion to avoid enforcement actions. Similarly, these exemptions cannot be used as a legal defense prior to the effective date of promulgation of this rule.

G. Exports of Wastes Eligible for CBEC or Contingent Management Exemptions

Under today's proposal, contingent management exemption wastes would remain hazardous until actually disposed of in accordance with the management conditions. The waste would thus remain subject to all applicable requirements of 40 CFR parts 262 and 263, including export requirements. Comment is requested on whether, if the point at which contingent management exemption wastes are no longer hazardous is changed to some point before actual management in accordance with the conditions, contingent management exemption wastes should still remain subject to the export requirements of 40 CFR part 262. Comment is requested on whether these export requirements are necessary to ensure that the contingent management exemption waste will be properly managed in the receiving country.

Under today's proposal, wastes qualifying for a CBEC exemption would not be subject to the export requirements of 40 CFR part 262. Comment is requested on whether exports requirements should be imposed on CBEC exemption wastes in order to ensure EPA's ability to comply with any current or future international obligations with regard to the export of hazardous and solid waste (for example, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal).

H. Public Participation in CBEC or Contingent Management Exemptions

To provide the public with access to information, the Agency is proposing that the first time a generator provides the Agency with notification of an exemption claim either for CBEC or contingent management wastes, he will be required to publish a notice of the exemption claim in a major local newspaper of general circulation. The notice should include the name and address of the facility, the description of the waste (as contained in the notification), the location at which further information on the exemption claim may be reviewed, and the period of time the information will be available at that location for review. The generator will be required to provide for public review copies of the notification submitted to the Agency, the sampling and analysis plan, and the testing data. The information can be made available to the public at a location or near the facility, and must remain available for sixty days after the date notification appeared in the local newspaper. The Agency requests comment on this proposed approach.

The Agency is also requesting comment on additional approaches to public participation. The current RCRA regulations do not require generators of hazardous waste to notify their community, rather these generators are required to register with the Agency and to receive a RCRA identification number. Therefore, some parties have suggested that the Agency should not require any public participation. Conversely, other parties have suggested public participation requirements including a formal rulemaking in the **Federal Register** similar to the requirements of the delisting program. Although the Agency is proposing a mid-point between these two approaches, comment is requested on alternatives.

The Agency is taking comment on whether public notice should be required for resubmittals of the notification. The Agency is also taking comment on whether public access to the date should be required for the duration of the claim, and not just for a sixty day period or other limited time period. In addition, the Agency asks for comments on whether the public should have the right during the public review period (or during some specified time) to request a hearing on the claim, and what the implications of such a right be (such as delay or uncertainty in the exercise of an exemption, or substantial cost).

XII. Other Changes to 40 CFR Part 261

As a result of toxicity studies and subsequent health-based level development efforts associated with today's proposal, the Agency is proposing to add a number of constituents to appendix VIII of part 261. As noted below, many of these constituents are currently listed in 40 CFR 261.33 as commercial chemical products that typically exhibit a characteristic. The Agency has determined that these constituents are toxic and/or carcinogenic and has developed health-based levels for each of them based on available information. Therefore, the Agency believes that these compounds should be added to the list of hazardous constituents:

Acenaphthene
Acetaldehyde (U001)
Acetone (U002)
Acrylic acid (U008)
Benzo(k)fluoranthene
Benzyl alcohol
n-Butyl alcohol (U031)
Cumene (U055)
Dibromo-chloromethane
Cyclohexanone (U057)
Di-n-butyl phthalate (U069)
Dimethylamine (U092)
1.4-Dioxane (U108)
Ethyl acetate (U112)
Ethyl benzene
Ethyl ether (U117)
Furan (U124)
Isophorone
Methanol (U154)
Methyl isobutyl ketone (U161)
Phenanthrene
Styrene
Vanadium (P119-vanadic acid, ammonium salt and P120-vanadium pentoxide)
Xylene (U239)
Zinc

The Agency requests comments on these proposed modifications to part 261 of the CFR.

Certain of the constituents listed above, when used as solvents, are currently regulated by the F003 solvent listing. F003 is currently listed solely for ignitability. The Agency is considering the need to publish a separate rulemaking to modify the listing basis for F003 (as well as the U-listed commercial chemical products listed above) to also include toxicity. The Agency requests comment of the need for this change.

XIII. Relationship to Other RCRA Regulatory Programs

Today's proposed exemption levels, when promulgated, will define where RCRA subtitle C jurisdiction ceases and, under ECHO, where it begins. As discussed below, these levels also may affect a number of RCRA regulatory programs such as delisting (40 CFR 260.22), land disposal restrictions (40 CFR part 268), closure (40 CFR part 264 subpart G), and corrective action (40 CFR part 264 subparts F, and S, when promulgated). The lower tier exemption levels, discussed under the contingent management approach, may represent a base-line level of concern for listed wastes, providing a unified basis for RCRA programs, such as closure and corrective action, which also regulate and remediate dilute wastes and contaminated media.

The CBEC approach proposed today would be promulgated only in the context of a listing exemption process and represent the conservative levels necessary for broad (*i.e.*, waste-specific) exemptions. However, permit writers reviewing and writing closure and corrective action plans may consider waste- or site-specific factors (*e.g.*, site hydrogeology, immobility) and specific statutory mandates to set clean-up levels for specific constituents that differ from the exemption levels. Higher levels also may pose minimal risk to human health and the environment.

A. Characteristics of a Hazardous Waste

The CBEC approach will establish exemption concentrations for 200 hazardous constituents in eligible listed waste or media or material containing those listed wastes. If the concentration of each of these hazardous constituents is below a baseline exemption level, the waste would not be considered the listed hazardous waste. However, the generator must still determine whether the waste exhibits any characteristics of a hazardous waste as specified in 40 CFR 261.21 through 261.24.

The ECHO approach will modify the existing toxicity characteristics (TC) by broadening the number of constituents included in the characteristic. Ultimately, constituent specific DAFs will be developed all TC constituents. Eventually, this approach would largely replace the current approach to hazardous wastes identification based on a combination of waste listings and the mixture and derived-from rules.

B. Requirements for Treatment, Storage, and Disposal Facilities and Interim Status Facilities

In order to implement the changes proposed today, changes may be needed in TSD waste analysis plans. Such changes will most likely include the addition of the appropriate analysis methods and changes that may be required in the frequency of testing.

Permitted facilities, in unauthorired States, who elect to employ the exemption procedures and who subsequently prepare changes to their waste analysis plans should, following promulgation of this rule, submit a Class I permit modification to EPA.

C. Hazardous Waste Listings

The Agency evaluated the likelihood that untreated hazardous wastes would be able to meet the exemption criteria in an "pure" state (*e.g.*, untreated and unmixed) and determined that it is extremely unlikely that the constituent concentrations in *untreated* hazardous wastes would be below the BDAT standards or today's proposed exemption levels. Specifically, the Agency's hazardous waste charactization data indicate that the concentrations of toxicants of concern in untreated listed wastes are typically present at levels many times higher than the BDAT and health-based levels. Thus, if the final rule is based on levels of 100 times health-based numbers or less and if eligibility is limited to certain wastes known to be highly toxic through other pathways, but highly immobile in an aqueous leaching medium, such as dioxins, then this rulemaking will not imply significant change in how the Agency does future waste listings. However, if the levels are significantly higher it could have a major effect on future listings.

D. Delisting

Delisting is a rulemaking process where the Agency reviews and evaluates specific requests for regulatory relief. Specifically, a petitioner submits a demonstration which supports the petitioner's claim that a specific listed hazardous waste does not meet the criteria for which it was listed, and that the waste is not hazardous for any other reason. If the Agency agrees with the petitioner that the petitioned waste is not hazardous, EPA publishes a proposed exclusion in the **Federal Register** and solicits public comment prior to the publication of a final exclusion. The Agency's evaluation considers the mobility of the specific constituents of concern for each petitioned waste. The basic aspects of determining the levels requiring no regulation under subtitle C in delisting and today's proposed exemptions are the same. Both programs generally use the same health-based data for comparison at the hypothetical compliance (exposure) point. Facilities must conduct similar levels of waste characterization for both programs particularly with respect to the number of samples required). The purpose of today's proposed rule is to establish a self-implementing, generic rule where the facility, rather than EPA, determines whether a listed waste must continue to be managed as a subtitle C hazardous waste.

Today's proposed exemption and delisting criteria differ in the multiplier used. In delisting, the Agency typically predicts the concentration of specific constituents at a compliance point (such as a drinking water well) to determine if the waste is likely to pose a threat to human health and the environment. This

prediction incorporates fate and transport modeling which accounts for some degree of dilution and attenuation due to toxicant migration to the exposure point. The CBEC contingent management proposal in today's notice would account for dilution or attenuation ten to one hundred times greater than the health-based numbers; the multiplier of ten is less than the most conservative value used in delisting evaluations and the multiplier of one hundred is greater than any delistings granted to date. However, in delisting evaluations, in addition to predicting hypothetical compliance-point concentrations, the Agency also evaluates existing ground-water monitoring data, where applicable. These data allow the Agency to evaluate the actual impact of the waste on the environment as currently managed. (Monitoring data are evaluated only for wastes that are managed in on-site or dedicated off-site land disposal units.)

Delisting and today's proposed exemptions for certain wastes will differ in analytical requirements. Delisting demonstrations require that the petitioner analyze the waste for those hazardous constituents that are reasonably expected to be present in the waste, with Agency oversight to ensure that the reduced list of analytes for delisting is truly representative of the petitioned waste. Today's proposed exemption demonstrations require analysis for *all* of the exemption constituents for the initial testing because there is no oversight provided by the Agency to ensure that the proper subset of constituents is examined. The Agency is soliciting comments on means of reducing testing requirements once the initial demonstration is made successfully. Thus, the delisting demonstration provides a means to narrow the necessary initial sampling to fewer contaminants than is proposed for today's exemption.

As mentioned above, the delisting exemption process is a rule-making activity that requires that the Agency propose each decision, solicit and consider public comments on each proposal, and publish all final decisions. Final exclusions are then listed in 40 CFR part 261, appendix IX.

Delisting petitions for wastes that contain toxic constituents which exceed the exemption levels will continue to be accepted and reviewed by the Agency. In addition, the Agency will accept petitions for wastes which are ineligible for today's proposed exemption because of analytical constraints. With the exception of a potentially reduced petition review burden, the Agency does not anticipate any changes in the current review of delisting petitions as a result of the implementation of today's proposed exemption.

E. Closure

Under today's proposed rule, a unit managing wastes that are shown to be below exemption levels would continue to be a regulated hazardous waste management unit subject to the requirements of parts 264 and 265, including the closure requirements until it completed clean closure or unless the waste and unit were delisted. A unit receiving only waste that is shown to be below exemption levels would no longer be receiving hazardous waste upon the effective date of the certification. Such a unit would thus normally become subject to subtitle C closure requirements; however, EPA believes that "closure" requirements could allow such units to continue to operate as nonhazardous units.

In cases where a unit receipt of hazardous waste due to certified compliance with the exemption, the closure requirements of 40 CFR 264.113(b) and 265.113(b), which require an owner or operator to complete closure of a hazardous waste management unit within 180 days after receiving the final volume of hazardous waste, would require closure of the unit. Thus, the owner or operator would have to close the unit in order to continue operation, including receipt of the exempt waste. The Agency believes that, in many cases, hazardous waste management units that continue to receive only exempt wastes would be able to satisfy the closure requirements of parts 264 and 265 while operating the unit and without removing the waste from the unit. However, in the case of surface impoundments, clean closure of the unit would be required. Where this is not possible, filing of the certification would trigger the requirement to close with waste in place, thus require the unit to cease operation or to follow the delay-of-closure alternative of § 264.113 or 265.113.

In the case of tanks, 40 CFR 264.197 and 265.197 require the owner or operator to remove or decontaminate all waste residues, contaminated containment system components, contaminated soils, and structures and equipment in order to achieve clean closure of the tank unit. Under today's proposal, an owner or operator might demonstrate removal of hazardous waste residues from the tank by demonstrating that all waste in the tank is below exemption levels, without removing the waste from the tank. In cases where the owner or operator could not demonstrate that all wastes in the tank were below exemption levels, he or she would have to remove the hazardous waste in order to achieve closure of the unit. In some cases, the facility owner or operator may be able to demonstrate that a tank no longer managed hazardous waste (because the waste was below exemption levels), but did not achieve clean closure because of soil and perhaps groundwater contamination. In this case, the facility owner or operator would have to remove the contamination to clean closure levels, or close the area as a landfill. During this period, the tank could be used to manage nonhazardous wastes, as long as this activity did not interfere with cleanup or control of the contaminated areas.

In the case of surface impoundments, if the owner or operator can demonstrate that the wastes in the impoundment are below exemption levels, then the owner or operator may be able to achieve clean closure of the unit without removing the wastes from the impoundment, providing that the requirements of 40 CFR 264.228 or 265.228 and the general closure requirements of part 264 or 265 Subpart G are met. In this case, use of the unit could continue uninterrupted. In many cases, however, it is likely that the owner or operator will be unable to make that demonstration. In these cases, the facility owners would have two options if they wished to continue using their units: (1) they could cease receiving waste and close the unit by removal in accordance with part 264 or 265, or (2) they could seek to delay closure under the provisions of 40 CFR 264.113 (d) and (e) or 40 CFR 265 (d) and (e). In cases where clean closure of the unit cannot be achieved, and the owner or operator cannot satisfy the requirements of 40 CFR 264.113 (d) and (e) and 265.113 (d) and (e) to delay closure, filing the CBEC certification would trigger the closure requirements and the owner or operator would have to close the unit as a landfill and stop operation of the unit.

F. Subtitle C Corrective Action

Today's proposed rule, when promulgated, may have an impact on the implementation of RCRA subtitle C Corrective Actions for regulated units under 40 CFR part 264 subpart F and for solid waste management units under § 3004(u). As proposed, CBEC tier 1 levels are the lowest levels of regulatory concern and thus will become presumptive cleanup levels for corrective action and clean closure. The

Agency has used identical health-based levels to develop the exemption levels and the "action levels" proposed on July 27, 1990 (see 55 FR 30798) as part of the RCRA corrective action program. Actual clean-up levels, however, may differ from both the action levels and exemption levels due to the consideration of waste- and site-specific factors, and other data gathered during the investigatory and evaluative phases of the corrective action process (*e. g.*, the RCRA Facility Investigation and the Corrective Measures Study).

G. Land Disposal Restriction Program

An important factor in determining the impact of today's proposal is the relationship between the CBEC and ECHO levels proposed today and the RCRA land disposal restriction standards.

Section 3004(m) of RCRA requires that hazardous wastes be treated to a level at which "short-term and long-term threats to human health or the environment are minimized" prior to land disposal. In the "Third Third" land disposal restriction rulemaking, 55 FR 22520 (June 1, 1990), the Agency explained in detail its interpretation that the statute leaves to EPA the determination of whether the LDR treatment standards attach at the point of waste generation or at the point of disposal. *Id.* at 22651–22563.

In the Third rule, EPA explained why the Agency believed that the point of generation approach would generally better meet the goals and purposes of the LDR program than a point of disposal approach. *Id.* at 22652. However, EPA also explained that the point of disposal approach is appropriate in certain circumstances, such as when applying LDRs at the point of generation would seriously disrupt the implementation of other environmental regulatory programs. *Id.* at 22653. One of the policy rationales for exercising its discretion under the statute to generally require full BDAT treatment for wastes that are hazardous at the point of generation was the inadequacy of existing hazardous waste identification programs; specifically wastes identified as hazardous for a particular characteristic might still be toxic, due to the presence of non-TC constituents, even when that characteristic is removed. *See id.* at 22652. Such waste thus would not meet the Section 3004–(m) "minimize threat" land disposal standard even after it is no longer "hazardous".

The decision concerning which LDR approach to utilize with respect to the low hazard waste subject to today's proposal may significantly affect the practical impact of the options proposed today. For example, a waste which is hazardous when generated but treated to CBEC or ECHO levels may still, under a point of generation approach, require treatment to any more stringent LDR level prior to land disposal. Thus, many CBEC or ECHO wastes may require LDR treatment prior to disposal in a Subtitle D unit.

However, to the extent that the CBEC or ECHO proposal here provide a more comprehensive way of determining the hazards presented by hazardous wastes, requiring treatment beyond the levels at which a waste is hazardous may no longer be necessary to "minimize threats." For that reason, EPA is taking comment on some aspects of adopting the point of disposal as the point at which LDR standards attach as one alternative way of addressing the interaction between the CBEC and ECHO approaches proposed today and the RCRA land disposal restrictions. For example, the Agency is considering this alternative in addressing the problems raised by the cleanup of contaminated media (see further discussion in Section III. E.) In addition, under the ECHO approach, EPA is requesting comment on this alternative for addressing the issues raised by the land disposal restrictions' relationship to characteristic wastes. EPA requests comment on this issue.

Section 3004(m) of RCRA provides that treatment standards for hazardous waste prior to land disposal cannot be below levels at which "short-term and long-term threats to human health and the environment are minimized." See also *HWTC* v. *EPA (HWTC III)*, 886 F.2d 355, 362 (D.C. Cir. 1989), *cert. denied* 111 S.Ct. 139 (1990). To date, the Agency has been unable to define risk-based levels which meet the Section 3004(m) standard. *See* 55 Fed. Reg. 6640 (February 26, 1990. EPA expects to address the issue of the relationship between the BDAT standards and the Section 3004(m) "minimize threat" standard in more detail in the upcoming LDR "phase two" proposal, to be published this summer. However, EPA also recognizes that the levels proposed in this rule may also be related to the "minimize threat" standard. If the CBEC or ECHO levels are also the "minimize threat" standard, then wastes that are treated to levels below the exemption level would also have met their obligation under the LDR program and could accordingly be land disposed without treatment. The Agency asks for comment on whether the levels proposed in this rule should be the " minimize threat" level that bounds the LDR treatment standards.

H. RCRA Emission Standards

Today's proposed rule, when promulgated, may have an impact on the effectiveness of two other RCRA rules developed by the Agency under HSWA authority. Section 3004(n) of HSWA directed the Agency to promulgate regulations controlling air emissions from hazardous waste TSDFs "as necessary to protect human health and the environment." Subsequent Agency analysis demonstrated that air emissions from TSDFs do pose substantial risk in the absence of controls, and that controls were therefore required under the HSWA mandate. The Agency is fulfilling this mandate in phases; a rule was promulgated in 1990 covering certain sources at TSDFs (55 FR 25454, June 21, 1990), and the remaining sources were addressed in a second rule proposed in 1991 (56 FR 33490, July 22, 1991). Together, these rules would reduce the risk from air emissions from the vast majority of these facilities to well within the risk range of other RCRA standards. After more thorough analysis, the Agency may issue a third phase of these regulations to address any residual risk. The emission reductions achieved by these rules would also significantly reduce the formation of ozone, which has adverse effects on human health and the environment.

Today's rule could affect the TSDF air emissions regulations in the following way. The TSDF rules were designed to prevent volatilization of hazardous organics as they move through storage and treatment, keeping the organics in the waste until it ultimately undergoes BDAT treatment, which is assumed to remove any significant risk from exposure via the air medium. If, under any of the exemptions proposed today, waste leaves the system without BDAT treatment, that waste must be assumed to pose a potential air risk until further analysis shows otherwise. If significant risk exists, it may be necessary to develop air-based exemption criteria to supplement those suggested in today's proposal. Such criteria could entail additional waste testing. The Agency specifically requests comment on this issue, and on ways to address it.

XIV. CERCLA Program

All listed hazardous wastes are listed as hazardous substances under section 101(14)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. Under section 103(a) of CERCLA, notification must be made to the Federal government

of a release of any CERCLA hazardous substance in an amount equal to or greater than the reportable quantity (RQ) assigned to that substance within a 24 hour period. (See 40 CFR part 302 for a list of CERCLA hazardous substances and their RQs.) Once a specific waste from a particular facility has been shown to meet the exemption criterion in this rule, the waste is no longer a listed hazardous waste and therefore no longer a hazardous substance by virtue of its hazardous waste listing, and thus notification under CERCLA of a release of the exempted waste may not be necessary. In this situation, CERCLA notification of releases of the waste would only be required if the waste or any of the constituents of the waste are CERCLA hazardous substances by virtue of section 101(14)(A), (B), (D), (E), or (F) of CERCLA or 40 CFR 302.4(b), and are released in amounts greater than or equal to their RQs. The Agency requests comment on this approach.

The Agency believes that exemption levels also may be applicable to the CERCLA program where it has been documented that RCRA listed hazardous waste has been disposed of at the site. Section 121(d) of CERCLA, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, requires that CERCLA actions comply with, or justify a waver of, applicable or relevant and appropriate requirements (ARARs) under federal and state environmental laws. When RCRA requirements are identified as ARARs at CERCLA sites because of the presence of RCRA listed hazardous wastes at the site, the Agency believes that the CBEC/ECHO exemption levels will become the preliminary remediation goals for listed wastes, depending on site-specific factors and other criteria specific to the CERCLA program. In addition, all of the options would determine the legal applicability of federal RCRA managements requirements to remediation wastes generated at Superfund sites.

At sites undergoing CERCLA remedial activities where no listed hazardous wastes have been identified, the Agency will generally use a site-specific risk assessment for all chemicals for which there are no ARARs. In some cases, these health-based clean-up levels will be higher than the exemption levels, based on a reasonably conservative exposure scenario which does not include leachate ingestion. In other cases, the CERCLA health-based clean-up levels will be lower than exemption levels when additive effects are considered or when specialized analytical techniques are required in order to lower quantitation limits. The CERCLA health-based clean-up levels may also be different than exemption levels based on the consideration of site-specific factors.

XV. State Authority

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State and EPA could not issue permits for any facility in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement HSWA requirements and prohibitions in an authorized State, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect of State Authorizations

Today's proposal, if finalized, will promulgate regulations that are not effective under HSWA in authorized States. Thus, the exemption will be applicable only in those States that do not have final authorization.

Authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose more stringent regulations than the Federal program. Today's proposal for CBEC exemptions is considered to be less stringent than, or a reduction in the scope of, the existing Federal regulations because that portion of today's proposal would exempt certain activities now within the purview of RCRA subtitle C. Therefore, authorized States are not required to modify their programs to adopt regulations consistent with and equivalent to the CBEC rulemaking. However, to the extent that the ECHO option brings new wastes into hazardous waste regulation; those aspects of this rulemaking would, if finalized, need to be adopted by authorized States.

Even though States are not required to adopt most options in today's HWIR proposal, EPA strongly encourages States to do so as quickly as possible. As already explained in this preamble, today's proposal will reduce over-regulation of dilute wastes and contaminated media, will facilitate evaluating remediation alternatives for CERCLA clean-ups and the RCRA Corrective Action Program, will provide an alternative to delisting, and will speed research and development for treatment alternatives to land disposal and waste minimization, recycling, and reuse. States are therefore urged to consider the adoption of all aspects of today's HWIR proposal (when promulgated); EPA will expedite review of authorized State program revision applications.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

XVI. Economic Assessment

A. Background

The Agency has conducted a preliminary economic assessment (EA) in conjunction with the development of today's proposed rule. This analysis quantifies cost savings potentially

associated with the four primary options presented under both prospective of this proposal. These are: the health based approach, the technology approach, the contingent management approach, and the Expanded Characteristic Option (ECHO).

The analysis conducted for this Notice of Proposed Rulemaking is to be considered preliminary. A comprehensive final Regulatory Impact Analysis (RIA) will be developed in conjunction with the Final Rule. This RIA will be consistent with procedures described in appendix V of the Regulatory Program of the United States Government.

Results from the Agency's preliminary analysis indicate that the proposed rule would not cause major increases in prices or costs or have other significant adverse effects. EPA expects that the proposed regulations, as part of the Agency's RCRA reform initiative, could reduce costs to the economy in excess of $100 million per year, particularly hazardous waste storage, treatment, and/or disposal costs.

The complete Economic Assessment document, Preliminary Economic Assessment of the Hazardous Waste Identification Rule, is available in the docket established for this proposed rule. The following is a summary of the methodology used in performing the EA and the results of the analysis.

B. Potentially Affected Wastes

The proposed rulemaking would affect two broad categories of wastes, listed hazardous wastes and media contaminated with listed hazardous waste. Listed hazardous wastes are deemed hazardous by virtue of being listed by the Agency. Contaminated media commonly refers to all soil, debris and other materials which have been contaminated with a listed waste.

Two primary categories of listed hazardous wastes will be affected by this rule, wastes as generated and residuals. Wastes as generated refer to the composition of wastes as they are originally released, prior to any treatment. Residuals refer to any residue which may remain after BDAT treatments as identified under the LDR program. In the category of contaminated media, this analysis focus only on contaminated soils.

The EA estimates the proposed rule's cost savings separately for waste and media because different data sources and slightly different regulatory options apply to wastes and media.

1. Process Waste

The population of hazardous wastes potentially affected by today's proposal was estimated using data from EPA's 1986 National Survey of Hazardous Waste Generators. This Survey was used because it was the only readily available comprehensive data source found to link volume estimates to constituent concentrations, by waste stream. The Agency recognizes the limitations and problems potentially associated with the use of a single data source that is more than five years old. The Agency plans to compare, adjust and update these data combining information supplied in comments and various alternative data sources, throughout development of the final rule making process.

The 1986 Survey indicates that approximately 718 million tons of RCRA hazardous waste were generated in 1986. As much as 60 percent of this total may be managed exclusively under the Clean Water Act. Of the total, approximately 344 million tons are ineligible for potential exemption because they are characteristic wastes and, if treated such that the characteristic is removed, would be unregulated, thus unaffected. Another 224 million tons are hazardous wastes that are both characteristic and listed. They may be eligible, if the characteristic is removed. The remaining 150 million tons are listed wastes, which are also eligible under this proposal. Six of the 150 million tons were excluded from analysis, however, because they are either discharged without treatment to publicly owned treatment works (POTWs) or waterways, and therefore unlikely to generate savings, or are contaminated soil, which is addressed separately. Of the remaining 144 million tons of listed wastes, 120 million tons are wastewaters and 24 million tons are non-wastewaters.

The Agency determined which of the eligible hazardous wastes would be exempt under alternative regulatory options by using three types of data inputs. (1) Waste concentration data were identified from the 1986 Generator Survey for individual listed waste streams. These streams constituted 84 percent of the listed wastewater volumes and about 13 percent of listed non-wastewater volumes. The results for these waste streams were extrapolated to estimate the impacts on listed waste streams for which constituent concentration data were not available and on wastes that are initially both listed and characteristic wastes. (2) This analysis used the health-based levels (e.g., MCLs, RfDs, and RSDs), and criteria discussed in section VI of the Preamble to determine the volumes of waste affected under the corresponding regulatory options. (3) Information from the land disposal restrictions program was used to determine proposal standards under options based on BDATs, to identify the treatment methods that would be required for wastes remaining subject to subtitle C regulation, and to determine the contaminant concentrations achievable by available treatment technologies.

2. Contaminated Media

The universe of contaminated media potentially affected by this proposed rule includes contaminated soil and contaminated ground water. This analysis focuses on contaminated soil only. Contaminated ground water is not analyzed for two reasons. First, data characterizing the volume of contaminated ground water are incomplete and contain a great deal of uncertainty. Second, the cost savings for ground water are likely to be relatively small. Contaminated ground water is often managed under Clean Water Act provisions by being discharged to POTWs or under National Pollutant Discharge Elimination System permits and therefore may not be significantly affected by this proposal.

Contaminated media subject to subtitle C are normally generated by remediation activities. For this analysis, the Agency focuses on five sources of contaminated media: CERCLA (Superfund) actions, RCRA corrective actions, RCRA closures, state Superfund cleanups, and voluntary cleanups.

For each of these sources of contaminated media, upper- and lower-bound estimates are developed for (1) the number of sites with contaminated soil; (2) the quantity of contaminated soil to be excavated at these sites; and (3) the pace of excavation. A range of estimates is used because of the substantial uncertainty associated with contaminated soil generation rates. Based on this approach, it is determined that approximately 3 to 11 million tons of contaminated soil will be generated per year.

Contaminated soil may be affected by this proposal if, (1) it is contaminated with listed wastes and (2) constituents in the soil are below applicable

concentration levels, as identified in the various options. The proportion of excavated soil that contains only listed wastes was estimated using data submitted to EPA by three hazardous waste landfills in 1990 and 1991. These data suggest that from 28 to 61 percent of contaminated soil subject to regulation as hazardous waste, contains listed waste. This estimate, however, is highly uncertain because of the difficulties of identifying listed waste in soil. The portion of contaminated soil with constituents below proposed levels (i.e., exempt from subtitle C) was generally estimated by using data from Superfund Records of Decision from 1988 and 1989 on the constituent concentration and volume of soil at CERCLA sites.

C. Estimated Cost Savings

By exempting wastes from regulation, the proposed rule would generate cost savings from the point of hazardous waste generation to disposal. Volumes exempted and cost savings are projected for wastes as generated, mixed and derived-from wastes and treatment residuals. This analysis focuses on the most significant cost savings: treatment and disposal cost savings for wastes, and treatment cost savings for contaminated media (soils). Thus, the estimated cost savings depend on the volume of waste and media exempted, the treatment or disposal avoided, and the unit savings for different treatment and disposal methods.

Hazardous wastes may incur treatment and/or disposal cost savings. In general, the estimated savings are equal to the cost of treatment and disposal of residues under subtitle C minus the cost of disposing of the exempted waste in a subtitle D landfill. Second, if a hazardous waste meets BDAT and proposed concentration standards (*e.g.*, BDAT treatment residues), the only savings will be lower disposal costs. These savings will equal the difference between subtitle C and D disposal costs.

The primary costs savings for contaminated soils will be avoided treatment costs. Disposal savings do not arise because contaminated media exiting subtitle C is assumed not to be subject to subtitle D because media are not solid wastes.

For each regulatory approach, the following discussion presents the Agency's estimates of the volume of wastes as generated, residuals, and contaminated media exempted from subtitle C and the associated costs savings.

1. Health-Based Approach

This option would establish exemption criteria by combining health-based levels and multipliers (DAFs). It combines constituent concentration levels that minimize threats to human health (based on conservative estimates of human responses to contaminants) with multipliers reflecting reasonable worst-case management scenarios for exempted wastes. Under this option, the Agency would use health-based levels equivalent to proposed or final MCLs established under the Safe Drinking Water Act, RfDs for non-carcinogens, and RSDs for carcinogens. Additionally, exemption criteria for contaminated media could be based on direct exposure using soil ingestion and inhalation scenarios for residential settings. For a complete discussion of health based levels used in this section see chapter VI of the proposed rule preamble.

Volumes of processed waste and contaminated media affected by this rule each year, and the associated cost savings, are shown in Exhibit 1. All results are presented as ranges to reflect the substantial uncertainty in these estimates, including the concentration of hazardous constituents in potentially eligible process wastes and the volumes of contaminated soil generated annually. Furthermore, the wide range of estimates also reflects the differences among the health-based sub-options (*i.e.*, multiplier of 1, multiplier of 10, or a multiplier of 100 and, for contaminated media, the direct exposure).

The health-based option would exempt from just over 6, to nearly 84 million tons of wastes and contaminated media from subtitle C regulation annually. The largest portion of the volume exempted is residuals from BDAT treatment of process wastes (6 to 50 million tons). Total cost savings for the health-based option range from approximately $62 to $1,820 million per year. The largest savings result from exemption of contaminated media, because of the high treatment costs.

Different regulatory options and sub-options for process wastes (*i.e.*, wastes as generated and residuals) and contaminated media may be advantageous. Thus, in the EA, the Agency presents separate estimates for each sub-option for process wastes and contaminated media. For process wastes, the greatest savings could be achieved with a sub-option multiplier of 100, from $296 to $364 million per year. For contaminated media, the multiplier of 100 sub-option produces cost savings of $400 to nearly $1,500 million annually. Cost savings for other sub-options and combinations are presented in the EA.

EXHIBIT 1.—HEALTH-BASED APPROACH PROCESS WASTE & CONTAMINATED MEDIA

	Affected volumes (million tons/year)	Cost savings (million $/yr)
Wastes eligible before treatment	<1 to 32	46 to 284
Residuals from other wastes	6 to 50	4 to 80
Contaminated media	<1 to 2	12 to 1,456
Totals	6 to 84	62 to 1,820

2.Expanded Characteristic Option (ECHO)

The expanded characteristic option (ECHO), is evaluated in this section. This scenario estimates the potential volumes exempted and corresponding cost savings associated with expanding the current list of characteristics to include all currently listed constituents. As is the case with wastes now defined as hazardous by a characteristic, wastes would be exempt from subtitle C once treated to remove the characteristic. Those wastes for which the listing is not replaced by the expanded characteristics would still be listed and subject to the mixture and derived from rules. This option may also include landfill design specifications and associated meteorological and geological conditions.

The impact of this option on process wastes was developed by using the results of the health-based option with a multiplier of 100. The Agency, however, recognizes that under this option, constituent specific multipliers may be higher or lower than 100 for specific constituents. This option may significantly increase the total number of constituents managed under subtitle C. Ultimately, it may also significantly decrease the volume of waste regulated under subtitle C, depending on the levels selected for DAF multipliers.

Based on the above assumptions, the total volume of process waste and residuals projected to be exempt under this option is estimated to range from about 68 to 84 million tons. The total cost savings is likely to be higher than the $296 to $364 million under the multiplier of 100 option. This may result from less rigorous testing requirements (based on current TC testing requirements).

The total volumes of contaminated media affected by this approach range from about one-half to nearly 2 million tons per year, for an annual cost savings of $397 to $1,456 million. These large

ranges reflect major uncertainties in the amount of contaminated soil generated annually and the actual extent to which the toxicity characteristic is expanded (*i.e.*, the portion of contaminated soil below proposed levels).

The above savings may be overstated since some non-hazardous waste may be brought into subtitle C when the characteristics are expanded. Depending on the ultimate DAFs set for specific constituents, these savings are also potentially understated.

EXHIBIT 2.—CHARACTERISTIC MANAGEMENT APPROACH PROCESS WASTE & CONTAMINATED MEDIA

	Affected volumes (million tons/year)	Cost savings (million $/yr)
Wastes eligible before treatment	18 to 32	216 to 284
Residuals from other wastes	50	80
Contaminated media	0.4 to 2	397 to 1,456
Totals	68.4 to 84	693 to 1,820

3. Technology-Based Approach

Under this option, exemption levels would be based on the performance of the best available waste treatment. This option mirrors the approach taken in the subtitle C Land Disposal Restrictions program, which establishes standards based on the best demonstrated available technology (BDAT). Although BDAT levels are generally below health-based levels, they may in a few cases be higher than acceptable health-based levels. For this reason, the technology-based option may be combined with health-based criteria to ensure that if wastes continue to pose hazards at the BDAT levels they would not be exempted.

Volumes of wastes as generated, residues, and contaminated media exempted by the technology-based alternative are presented in Exhibit 3, along with cost savings on treatment and disposal. The total volume of waste exempted may range from nearly 55 to 65 million tons per year, with a total cost savings ranging from approximately $203 to $260 million per year.

The Agency assumes that no contaminated media will be exempt from subtitle C regulation under the technology-based approach. This is because we assume in the baseline of this analysis that contaminated soils (the only media studied in this EA) will be treated to BDAT levels when they are excavated, pursuant to the LDR program. This analysis assumes that all contaminated soils are excavated and are then treated to BDAT levels and subsequently exit subtitle C. However, a portion of soils may not exit subtitle C either because they are not treated or because treatment does not reach BDAT levels. The cost savings that could result from exempting some of these soils has not been quantified.

Under the technology-based approach the greatest share of cost savings results from exemption of waste residuals (Exhibit 3). This is estimated at approximately 52 million tons per year, with a corresponding cost savings of approximately $140 million annually.

EXHIBIT 3.—TECHNOLOGY BASED APPROACH PROCESS WASTE & CONTAMINATED MEDIA

	Affected volumes (million tons/year)	Cost savings (million $/yr)
Wastes eligible before treatment	3 to 13	63 to 119
Residuals from other wastes	52	140
Contaminated media	0	0
Totals	55 to 65	203 to 259

4. Contingent Management Approach

The contingent management approach employs different management requirements depending on the waste constituent concentration. Most contaminated wastes and media would be regulated under existing subtitle C requirements. Wastes with low levels of contamination would be regulated under RCRA subtitle D, while media with low levels of contamination would be exempt from subtitle D as well as subtitle C requirements. Wastes and media with intermediate levels of contamination would receive management appropriate to those levels.

Exhibit 4 shows the volumes of process wastes and contaminated media exempted under the contingent management approach and the resulting cost savings. Uncertainty in the total volumes of contaminated media are reflected in upper and lower values for these estimates. The upper and lower estimates also reflect the concentration of hazardous constituents in process wastes and the sub-options for managing soils in the intermediate range of contamination created by the contingent management approach.

Total volumes of process wastes and contaminated media affected range from about 9 to 60 million tons per year. Of this, the greatest volume is for process waste, accounting for approximately 59 million tons per year eligible under the contingent range. The greatest contributor to total cost savings is contaminated media at a multiplier of less than 10, which would produce savings ranging from $358 to $1,314 million per year.

Under the contingent management approach, process wastes and contaminated media affected by the rule would either be entirely exempt from subtitle C regulation or would be subject to less stringent management requirements depending on their levels of contamination. Process wastes in the intermediate range of contamination could either receive full subtitle C management (in which case there would be no change from the status quo and no cost saving), or be placed in a subtitle D landfill. The cost savings achieved if all process wastes are placed in a landfill meeting default requirements for municipal solid wastes may total $228 to $233 million per year. Actual cost savings within this contingent category, however, are likely to be less, depending upon specific management requirements.

Contaminated soils in the intermediate range of contamination could receive one management choice that does not apply to process wastes. Contaminated soils could be capped in-place to meet subtitle D requirements. As with process wastes, there are no cost savings for contaminated media that continue to receive subtitle C management. However, if all contaminated media currently falling within the intermediate range (HBN*10–HBN*100) of contamination were placed in a subtitle D landfill, cost savings would range from $35 to $129 million per year (see EA). If all contaminated soils were capped in-place, the cost savings would be slightly larger, amounting to $38 to $139 million per year (see EA). Thus, the full range within this category is $35 to $139 million cost savings per year.

Cost savings for in-place capping are greater than cost savings for subtitle D landfilling because the average cost per ton of capping soil ($18) is less than the average cost per ton of placing soil in a subtitle D landfill ($72).

EXHIBIT 4.—CONTINGENT MANAGEMENT APPROACH PROCESS WASTE AND CONTAMINATED MEDIA

	Affected volumes		
	<HBN*10	>HBN*10-HBN*100	>HBN*100
	Million tons/year		
Wastes eligible before treatment and residuals from other wastes	9 to 24	58 to 59	All other remain in subtitle C.
Contaminated media	0.4 to 2	<0.1 to 0.2	Remaining media.
Totals	9 to 26	58 to 60	Remaining.

	Cost saving			
	<HBN*10	>HBN*10-HBN*100	>HBN*100	Total
	Million dollars/year			
Wastes eligible before Treatment and residuals from other wastes	67 to 132	228 to 233	0	295 to 365
Contaminated media	358 to 1,314	35 to 139	0	393 to 1,453
Totals	425 to 1,446	263 to 372	0	688 to 1,818

5. Comparison of the Options

Four different regulatory options were considered in this analysis; the health-based approach, the characteristic management approach, the technology approach, and the contingent management approach. Quantification of potential cost savings associated with these options was developed to coincide with the primary options presented in the proposed rule. Results presented in this analysis will provide the reader with a useful overview of the potential range of impacts associated with each primary option in the proposed rule. Alternative sub-options discussed in the proposed rule are not quantified in this analysis. The Agency intends to fully quantify all aspects of each option and sub-option as presented in the final rule.

Total potential cost savings across all four options, for both process waste and contaminated media, range from about $60 to $1,870 million per year. The characteristic and contingent management approach appear to provide the highest general cost savings to industry, ranging from nearly $700 to $1,870 million per year. The technology based approach provides the least cost savings to industry, at $200 to $260 million per year.

Overall, it appears that those options that may be the most difficult to implement, enforce, and maintain, may provide the most cost savings. However, potentially significant implementation cost factors associated with the two high savings options have not been quantified in this analysis. Furthermore, potential costs associated with health-based assurances needed to implement the contingent and characteristic options may further reduce potential savings.

D. Potential Health and Environmental Impacts

It is the Agency's intent that the criteria for exempting hazardous wastes and contaminated media from subtitle C regulation be set at levels that have been determined to be protective of human health and the environment. Hazardous wastes exempted from subtitle C regulation would remain subject to solid waste management regulations, which would provide an adequately protective level of management tailored to the low risks presented by the wastes.

A more comprehensive discussion of health and environmental impacts potentially associated with this proposed rule is available elsewhere in the preamble.

E. Economic Impacts

Economic impact analysis is designed to determine the extent to which specific groups, such as industries, bear the costs or receive the benefits of environmental regulation. This information is important in evaluating the fairness of the distribution of benefits and costs, determining whether it is important to mitigate such effects, and assessing the social costs of regulation or, in the case of this proposal, the cost savings of deregulation. The two major types of economic impacts of the proposed rule are projected to be cost savings for hazardous waste generators whose wastes would be deregulated, and revenue losses for the waste management industry.

Based on the analysis of Generator Survey data, the major industrial sectors that generate the vast majority of listed hazardous wastes that could be affected by this proposal are primary metals and fabricated metal products; chemicals, plastics, pharmaceutical, and allied products; and petroleum refining and asphalt and coatings production. These industries would be the main beneficiaries of cost savings from changes in hazardous waste management practices as a result of this proposed rule.

In addition to generators of hazardous wastes, this proposal would benefit those parties responsible for management of contaminated media. The affected parties are those who spend funds on site remediation activities, such as federal, state, and local governments that conduct, finance, or oversee remediation activities; potentially responsible parties (PRPs) under CERCLA and state laws who conduct or finance remediation activities; hazardous waste treatment, storage, and disposal facilities (TSDFs) that conduct corrective actions or close hazardous waste management units; and firms, such as hazardous waste generators, that must remediate existing contaminated soil or clean up future accidental spills.

Under this proposal, future revenues to the commercial hazardous waste management industry could be lower than in the absence of such a rule; less hazardous waste and contaminated media would be required to be treated and disposed in subtitle C facilities. Cost savings that accrue to generators as a result of shifts from hazardous to non-hazardous waste management may mean losses in revenues for the commercial hazardous waste management industry. The net economic impact on the industry is undetermined. However, the net impact on society is

likely to be positive as scarce economic resources are refocused on the more hazardous wastes.

Despite potentially large foregone revenues for the industry, this proposal is unlikely to significantly adversely affect a significant number of commercial hazardous waste management firms for several reasons. First, based on data for 1990, the industry is healthy and growing. Total revenues exceeded $2.2 billion in 1990—more than a 50 percent increase over 1989 revenues.[11] Operating margins for the industry were 19 percent on average and rates of return on assets and equity were 8 percent and 13 percent respectively, representing a recovery from declines in 1989. Second, the industry still faces the prospect of continued growth in demand for commercial hazardous waste management as a result of other developments, such as increasing remediation activities (e.g., RCRA corrective actions) and the imposition of the land disposal restrictions. Third, many of the firms in the commercial hazardous waste management industry also operate subtitle D landfills. Thus, they would benefit from the increased demand for subtitle D management.

F. Limitations of the Analysis

The scope and accuracy of the methodology used to estimate the potential volumes of process wastes and contaminated media affected, and the associated cost savings are constrained in several ways. The major limitations include analytical and data constraints, non-quantified cost savings, non-quantified expenditures and unquantified effects on human health and the environment.

The Agency's analysis relies on data that have major limitations. For example, the analysis of process wastes is based on the Generator Survey, which reflects 1986 data. The generation and management of hazardous wastes have changed considerably since then. For example, at the time the survey was conducted, a virtually universal management proactive for wastewater involved storing large volumes in unlined pits, called surface impoundments, where the waters would be treated prior to reentering the larger NPDES system, or where wastewaters would be allowed to remain. In 1988, these impoundments had to comply with RCRA's minimum technology requirements, which meant for the majority of them that they closed down. Wastewaters which had been handled in these impoundments were then handled largely in tanks. This change in practice put a premium on minimizing the amount of wastewater handled. It is thus possible that pre-1988 volumes of waters subject to subtitle C are overstated for that reason.

In addition, the data used in the analysis of contaminated media are highly variable from year to year which makes extrapolation from past records difficult. For example, the volumes and concentration levels of contaminated soils are highly site-specific and depend on the depth and location of the sampling.

The analysis assumes that all states will adopt this proposal. In fact, the Resource, Conservation and Recovery Act allows authorized states to set more stringent levels. Cost savings may be overestimated to the extent that states adopt more stringent levels than in the federal proposal. Cost savings, however, may be underestimated to the extent the proposal causes the deregulation of wastes that are hazardous under state, but not federal rules. Cost savings may be further underestimated if proposed levels make it cost-effective for generators to initiate waste minimization programs.

Furthermore, this analysis does not account for changes as a result of the TC rule. In addition any new or delisted constituents since 1986 are not included. Other economic impacts potentially associated with this proposed rule, but not addressed here, are numerous. These may include: corresponding management impacts associated with alternative waste generation and disposal practices, the potential for transferring waste from tanks to surface impoundments, alternative engineering standards and corresponding long-term capital savings. These are just a few of the secondary economic impacts potentially associated with this proposal. The Agency intends to address as many of these items as possible in the analysis to accompany the final rule.

Non-Quantified Cost Saving

This analysis does not attempt to estimate all types of cost savings and expenditures potentially associated with the proposed Rule. The focus of the analysis is one savings attributable to reduced treatment and disposal costs of process waste (and wastewaters) and contaminated media. Additional savings may arise which have not been estimated.

- Avoided treatment costs for contaminated ground water. While contaminated media includes both soil and ground water, this analysis focuses exclusively on contaminated soil and therefore underestimates the cost savings. While the avoided costs are believed to be significantly smaller for ground water than soil, large quantities of ground water contaminated with listed hazardous wastes can be generated by remedial actions.
- Avoided storage costs, transportation costs, or other hazardous management costs arising prior to treatment.

Non-Quantified Expenditures

Potential changes in EPA and State administrative costs associated with this proposal are not estimated. While additional administrative costs will be involved in receiving, reviewing, and inspecting eligibility determinations, cost savings will arise because hazardous wastes, hazardous waste management units, and facilities will exit subtitle C. It is unclear whether the incremental costs would outweigh the incremental savings.

G. Data Needs—Request For Comment

Fundamental data limitations have been the primary difficulty in development of the preliminary economic assessment for this proposed rule. The Agency recognizes these data limitations and their impact on the analysis. One of the purposes of this proposal is to request data and comment related specifically to the current rule, as proposed. The Agency requests data and comments associated with three general areas of concern: industry; scientific/testing; and region, state and local issues.

Industry comments and data are requested under three broad categories:

Waste/Media Generation:

—Actual quantity of listed and/or characteristic hazardous waste generated on an average annual basis over the 1989 through 1992 period.
—Constituents and actual concentration levels of constituents linked to volumes identified above
—Constituent concentration estimates are needed at various points of generation and treatment:
—Out of the pipe
—After 1st treatment
—After 2nd treatment
—At point of disposal or discharge
—Actual quantity and extent of spills resulting in generation of contaminated media (soils, groundwater).

Waste/Media Management:

[11] "Commercial Hazardous Waste Management: Recent Financial Performance and Outlook for the Future," The Hazardous Waste Consultant, July/August 1991, pp. 4.1 to 4–20.

—Unit costs for treatment of waste and contaminated media to BDAT levels, under alternative methods and alternative quantity levels.
—Unit costs for management and storage of waste and/or media.
—Implications potentially associated with captive vs. offsite treatment (alternative cost estimates, management, etc.)
—Estimated pace of remedial activity for media.
—Potential impacts on costs associated with alternative engineering requirements for storage facilities.
—Comments on general facility costs and impacts/implications potentially associated with shifting from tanks to surface impoundments.

Facility/Industry Implications:

—Comments on closure implications potentially associated with this proposal.
—Perceived implementation costs associated with this proposal.
—Perceived liability, financial, and management implications potentially associated with this proposal.
—Potential facility operational benefits as a result of this proposal, such as potential cost savings and alternative management practices that may result if wastewater could be "freed up" to use again in the plant as make up, cooling, and closed loop process water.

Scientific/testing data specifically requested in conjunction with development of the final Regulatory Impact Analysis (RIA)are those identifying actual test results for leachates.

Region, State and local comments requested in conjunction with the EA include comment on issues such as perceived rate and extent of adoption by states, and associated impacts on other Agency actions. Comment is also requested in the area of testing and enforcement, specifically the cost of mandatory quality assessment/control testing, the sampling and analysis plans, and the number of tests needed for a representative sample of specific waste streams. The current EA for the proposed rule has been developed under significant time and data limitations. The Agency is aware of these limitations and will work to address them in the RIA for the final rule. Part of the procedure for development of a final RIA includes revision of the current document based on changes for the final rule, data revisions, and response to comments. The Agency has identified specific areas of concern for receipt of data and comments in support of a final RIA. However, comments need not be limited to the areas identified above. General and/or specific comments are welcome from all interested parties. The Agency has committed to the development of a full Regulatory Impact Analysis (RIA) in support of the April 1993 final rule.

XVII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The Economic Assessment conducted in support of the proposed rule includes a section, "Impacts on Small Entities." The findings in this section are briefly summarized below.

Small quantity generators (SQGs) are usually defined as entities that generate between 100 and 1,000 kilograms per month of hazardous waste (1.3 to 13.23 U.S. tons per year). Conditionally exempt small quantity generators (CESQGs) are entities that generate less than 100 kilograms per month of hazardous waste. The Agency estimates there are about 65,000 to 70,000 SQGs generating about 250,000 to 300,000 metric tons of hazardous waste annually. Multiple industries are represented by SQGs.

Based on the maximum allowable volume for SQGs of 1,000 kilograms per month (13.23 U.S. tons/year), and estimated pre- demonstration cost savings of $373/ton, the maximum tolerable demonstration costs are estimated at $4,850 per year. Demonstration costs are fixed costs per waste stream, while cost savings depend upon the size of the waste stream and volume exempted. As a result, a minimum volume of waste must be generated in order for any of the Hazardous Waste Identification options to be profitable. The small entity analysis in the Economic Assessment found that, in general, facilities would need to generate a minimum of 200 tons of eligible hazardous waste per year in order to have a financial incentive to seek exemption.

Demonstration/implementation costs have not been fully quantified for SQGs but are expected to be generally the same as for larger facilities, except for an extended allowance for storage. This factor alone is not expected to compensate for the several fold increase in volume needed to insure financial incentive for SQGs. As a result, the costs of gaining an exemption appear, in general, to significantly outweigh potential treatment and disposal savings for SQGs.

Demonstration costs under the enhanced characteristic option (ECHO) may be lower than other options because only one-time testing would be required. However, a multiplier of 100 under this option is expected to bring non-hazardous wastes into the subtitle C system. The Agency has not fully quantified demonstration costs under this option, or the additional waste volume that may be affected.

The CBEC option is expected to not significantly impact a substantial number of small entities because they generate waste volumes well below the point of financial incentive. Furthermore, exemption levels are considered deregulatory in nature and thus are expected to provide only beneficial opportunities for SQGs who may choose to pursue exemption under this proposal.

However, under the ECHO option it is possible that a significant number of small entities may be affected. Due to the short period of time available to the Agency to publish this proposal, the Agency has not had time to develop a regulatory flexibility analysis for the ECHO option in today's notice. For the final Regulatory Impact Analysis, the Agency intends to develop a comprehensive small entity analysis corresponding to this option. Pursuant to 5 U.S.C. 608(a) (allowing waiver or delay of initial regulatory flexibility analysis), I therefore find that publication of an initial regulatory flexibility analysis for this rule would be impracticable.

XVIII. Paperwork Reduction Act

The reporting, notification, or recordkeeping (information) provisions in this rule will be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.* Any final rule will explain how its reporting, notification, or recordkeeping provisions respond to any OMB or public comments.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and Recordkeeping requirements.

40 CFR Part 262

Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 264

Hazardous wastes, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

Dated: April 30, 1992.

William K. Reilly,

Administrator.

XIX. References

U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory; "Performance Testing of Method 1312—QA Support for RCRA Testing." EPA/600/489/022, June 1989.

Research Triangle Institute; "Interlaboratory Comparison of Methods 1310, 1311, and 1312 for Lead in Soil". U.S. EPA Contract 68–01–7075, November 1988.

U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response; OSWER Directive No. 9285.7; "Human Health Evaluation Manual, Part B: Development of Risk-based Preliminary Remediation Goals;" from Henry Longest II, Director, Office of Emergency and Remedial Response; and Bruce Diamond, Director, Office of Waste Programs Enforcement; to Regional Waste Management Division Directors; December 13, 1991.

U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response; OSWER Directive No. 9850.4; "Interim Final Guidance for Soil Ingestion Rates;" from J. Winston Porter, OSWER Assistant Administrator; to Regional Administrators (I–X); January 27, 1989.

U.S. Environmental Protection Agency, Office of Research and Development, Office of Health and Environmental Assessment; "Exposure Factors Handbook;" EPA/600/8–89/043, March 1990.

For the reasons set out in the preamble, it is proposed to amend title 40 of the Code of Federal Regulations as follows:

[Option 1

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. In 260.10, add the following definitions in alphabetical order:

§ 260.10 Definitions.

* * * * *

Dilution means the addition of materials, liquid or non-liquid, to increase the volume of a given waste or media to reduce constituent concentrations.

* * * * *

Media means any naturally-occurring soil or ground water.

* * * * *

Soil means unconsolidated earth material composing the superficial geologic strata (materials overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or is a mixture of such materials with other liquids, sludges, or solids, and is inseparable by simple mechanical removal processes.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

4. In 261.3, paragraph (e) is removed.

5. In 261.4, paragraphs (a)(12) and (13) (b)(13) and (14) are added to read as follows:

§ 261.4 Exclusions.

(a) * * *

(12) Environmental media (*e.g.*, soils and ground water) contaminated or mixed with one or more wastes listed in subpart D or with residuals derived from the treatment, storage, or disposal of a waste listed in subpart D that meet the conditions of this paragraph and the applicable exemption levels specified in appendix XI to part 261 [for a generic exemption]:

(i) Media with constituent concentrations meeting the exemption levels for [a generic exemption] in appendix XI will be considered non-hazardous so long as the following conditions are met:

(A) A sampling and analysis plan is prepared in accordance with the requirements specified in appendix XIII to part 261 prior to the waste being managed as non-hazardous;

(B) Representative samples of the contaminated media are analyzed in accordance with the requirements specified in appendices XI and XIII to part 261 prior to the waste being managed as non-hazardous;

(C) Sampling and analysis of media is repeated annually for the first two years an exemption is claimed and every three years thereafter (for as long as remediation or generation continue) and when process or operating changes (including upsets) occur which could affect the medium's composition.

(D) Notification of the exemption claim is received by the Regional Administrator prior to any management of media qualifying for exemption under this paragraph as non-hazardous. Notification must be resubmitted annually for the first two years an exemption is claimed and every three years thereafter and when process or operating changes (including upsets) occur which could affect the medium's composition. The notification must include:

(*1*) The name, address, RCRA ID number of the person seeking the exclusion, and identification of the exemption being sought;

(*2*) EPA Hazardous Waste Number;

(*3*) Average and maximum monthly and annual amount of excluded media;

(*4*) Name and address of the disposal facility; and

(*5*) The following statement signed by the person seeking the exclusion or his authorized representative.

Under penalty of criminal and civil prosecution for making or submission of false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.4(a)(12) have been met for all media contaminated with listed waste excluded from regulation according to the provisions of this part. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I have been authorized, in writing, to make such declarations by the person in charge of the generator's demonstration.

(ii) Notifications of the exemption must be submitted by certified mail to the Regional Administrator. Copies of notifications and all sampling and analysis records must be kept on-site for at least three years from the date of sampling. The three-year generator record retention period will be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Regional Administrator. Owners and operators must retain these records until the facility is closed.

(iii) As a condition of exclusion and for purposes of enforcing the conditions

set out in this paragraph, any person qualifying for an exemption under this paragraph must, upon request of any duly designated representative of EPA, furnish information relating to media excluded under this paragraph and permit such representatives at all reasonable times to have access to, and to copy, all records relating to such media, to enter the facility at reasonable times, and to inspect and obtain samples of such media and samples of any containers or labeling for such media.

(iv) On, or within, 5 working days of submitting a first notification of exemption under this paragraph, the person claiming the exemption must submit a notice with the following information for publication in a major local newspaper of general circulation. The claimant must provide the Regional Administrator with certification of submitting the notice for publication. The claimant must also make the notification and all supporting data and documentation available for public review and copying, at a location at or near the facility, for sixty days following publication of the newspaper notice. The notice, which shall be entitled "Claim of Exemption from the Definition of Hazardous Waste under 40 CFR 261.4," must include:

(A) The name, address, RCRA ID number of the person seeking the exclusion, and identification of the exemption being sought;

(B) Description of the waste and EPA Hazardous Waste Number;

(C) Average and maximum monthly and annual amount of excluded media; and

(D) Name and address of the disposal facility;

(E) Name and address of the location where the notification provided to the Regional Administrator and all supporting data and documentation for the exemption can be viewed and copied by interested parties, and the length of time the information will remain available, and

(F) The name and address of the Regional Administrator where written comments on the exemption claim can be submitted.

(v) The exclusion under this provision does not apply to:

(A) Media that are contaminated with F020, F021, F023, F024, F027, F028, K001, K009, K010, K017, K023, K024, K026, K027, K036, K037, K038, K039, K040, K043, K044, K045, K047, K099, K119 and P110 and media that are contaminated with 40 CFR 261.33 wastes that are not listed in appendix XI;

(B) Contaminated media containing any constituent in appendix 1 that is quantitatable at a level that exceeds the concentration-based exemption criteria level for that constituent;

(C) Contaminated media when the actual detection limit for a constituent (other than the 40 CFR part 261, appendix VII constituents for which the contaminating listed waste was listed) exceeds the concentration-based exemption criteria quantitation limit specified for that constituent in appendix 2 and the applicable concentration-based exemption criteria level is below that quantitation limit;

(D) Contaminated media that are diluted in ways not permitted under the land disposal restrictions in 40 CFR part 258 (rather than treated to reduce constituent loadings) to achieve the concentration-based exemption criteria levels;

(E) Contaminated media that change, or are changed, over time from the media characterized in the exemption determination due to reconstitution, process upsets or changes, or other factors affecting media composition or leaching; and

(F) Contaminated media that exhibit any of the characteristics of hazardous wastes listed in subpart C.

(13) Environmental media [*e.g.*, soils and ground water) contaminated or mixed with one or more wastes listed in subpart D or with residuals derived from the treatment, storage, or disposal of a waste listed in subpart D that meet the conditions of this paragraph and the applicable exemption levels specified in appendix XI to part 261 [for a contingent management exemption]:

(i) Before these hazardous wastes will be considered exempt from full regulation under this paragraph, the generator must comply with the following conditions:

(A) Sampling and analysis in accordance with the procedures and documentation requirements set forth in appendix XIII that demonstrates that the constituent concentrations in the media meet the applicable exemption levels in appendix XII. Sampling and analysis of media claiming an exemption under this paragraph must be repeated annually for the first two years the exemption claimed and every three years thereafter, and when changes to the production or treatment process (including upsets) occur that could affect waste composition;

(B) Notification of the Regional Administrator that an exemption is claimed for the media under this paragraph and certification that the constituent concentrations in the media meet the exemption levels set forth in appendix XI and that the media wastes will be disposed of in a unit meeting the criteria set forth in paragraph (a)(13)(i)(C) of this section. Notifications of the exemption must be submitted by certified mail to the Regional Administrator and must be resubmitted annually for the first two years of the exemption and every three years thereafter, when changes to the production or treatment process (including upsets) occur that could affect media composition, and when there are changes in the identity of the designated disposal facility. The notification must include:

(*1*) The name, address, and RCRA ID number of the person seeking the exemption and identification of the type of exemption being claimed;

(*2*) Average and maximum monthly and annual amounts of excluded media;

(*3*) Name and address of the disposal facility; and

(*4*) The following statement signed by the person seeking the exemption or his authorized representative:

Under penalty of criminal and civil prosecution for making or submission of false statements, representations, or omissions, I certify that the listed hazardous waste for which I assert an exemption from regulation according to the provisions of this part meet the exemption levels set forth in appendix XI to 40 CFR part 261 and that the disposal facility identified in this notification contains units meeting the criteria of 40 CFR part 258, subpart D. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information upon which the claim of exemption is based is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(C) Media meets the applicable LDR requirements of 40 CFR part 268 and is disposed of in a unit meeting the design criteria of 40 CFR part 258 subpart D.

(ii) Prior to satisfaction of all conditions for the exemption under this paragraph, including the condition that the media are managed in accordance with the applicable management standards, the wastes are hazardous wastes subject to full subtitle C regulation.

(iii) Notifications, and all sampling and testing plans and records upon which an exemption claim is based must be kept on-site for at least three years from the date of sampling. The three-year record generator retention period will be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Regional Administrator. Owners and operators must retain these records until the facility is closed.

(iv) Any person qualifying for an exemption under this paragraph must, upon request of any duly designated representative of EPA, furnish information relating to media exempted under this paragraph and permit such representative at all reasonable times to have access to, and to copy, all records relating to such media, to enter the facility at reasonable times, and to inspect and obtain samples of such media and samples of any containers or labeling for such media.

(v) Respondents in actions to enforce this paragraph who raise a claim that a certain material is exempt from regulation under this section must demonstrate, through appropriate documentation, satisfaction of all conditions necessary for the exemption.

(vi) On or within 5 working days of submitting a first notification of exemption under this paragraph, the person claiming the exemption must submit a notice with the following information for publication in a major local newspaper of general circulation. The claimant must provide the Regional Administrator with certification of submitting the notice for publication. The claimant must also make the notification and all supporting data and documentation available for public review and copying, at a location at or near the facility, for sixty days following publication of the newspaper notice. The notice, which shall be entitled "Claim of Exemption from the Definition of Hazardous Waste under 40 CFR 261.4," must include:

(A) The name, address, RCRA ID number of the person seeking the exclusion, and identification of the exemption being sought;

(B) Description of the waste and EPA Hazardous Waste Number;

(C) Average and maximum monthly and annual amount of excluded media; and

(D) Name and address of the disposal facility;

(E) Name and address of the location where the notification provided to the Regional Administrator and all supporting data and documentation for the exemption can be viewed and copied by interested parties, and the length of time the information will remain available, and

(F) The name and address of the Regional Administrator where written comments on the exemption claim can be submitted.

(vii) The exclusion under this provision does not apply to:

(A) Media that are contaminated with F020, F021, F023, F024, F027, F028, K001, K009, K010, K017, K023, K024, K026, K027, K036, K037, K038, K039, K040, K043, K044, K045, K047, K099, K119 and P110 and media that are contaminated with 40 CFR 261.33 wastes that are not listed in appendix XII;

(B) Contaminated media containing any constituent in appendix XII that is quantitatable at a level that exceeds the concentration-based exemption criteria level for that constituent;

(C) Contaminated media when the actual detection limit for a constituent (other than the 40 CFR part 261, appendix VII constituents for which the contaminating listed waste was listed) exceeds the concentration-based exemption criteria quantitation limit specified for that constituent in appendix XII and the applicable concentration-based exemption criteria level is below that quantitation limit;

(D) Contaminated media that are diluted in ways not permitted under the land disposal restrictions in 40 CFR part 268 (rather than treated to reduce constituent loadings) to achieve the concentration-based exemption criteria levels;

(E) Contaminated media that change or are changed over time from the media characterized in the exemption determination due to reconstitution, process upsets or changes, or other factors affecting media composition or leaching; and

(F) Contaminated media that exhibit any of the characteristics of hazardous wastes listed in subpart C.

(b) * * *

(13) Waste listed in subpart D; residuals from treatment, storage, and disposal of waste listed in subpart D; mixtures of solid wastes and wastes listed in subpart D; and materials that contain wastes listed in subpart D that meet the conditions of this paragraph and the applicable exemption levels specified in appendix XII to part 261:

(i) Wastes with constituent concentrations meeting the exemption levels for [a generic exemption] in appendix XI will be considered non-hazardous so long as the following conditions are met:

(A) A sampling and analysis plan is prepared in accordance with the requirements specified in appendix XIII to part 261 prior to the waste being managed as non-hazardous;

(B) Representative samples of the wastes are analyzed in accordance with the requirements specified in appendices XI and XIII to part 261 prior to the waste being managed as non-hazardous;

(C) Sampling and analysis of waste is repeated annually for the first two years an exemption is claimed and every three years thereafter (for as long as remediation or generation continue) and when process or operating changes (including upsets) occur which could affect the medium's composition.

(D) Notification of the exemption claim and certification that all conditions of the exemption have been met is received by the Regional Administrator prior to any management of waste qualifying for exemption under this paragraph as non-hazardous. Notification must be resubmitted annually for the first two years an exemption is claimed and every three years thereafter and when process or operating changes (including upsets) occur which could affect the medium's composition. The notification must include:

(*1*) The name, address, and RCRA ID number of the person seeking the exclusion and identification of the type of exemption being claimed;

(*2*) EPA Hazardous Waste Number;

(*3*) Average and maximum monthly and annual amount of excluded media;

(*4*) Name and address of the disposal facility; and

(*5*) The following statement signed by the person seeking the exclusion or his authorized representative.

Under penalty of criminal and civil prosecution for making or submission of false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.4(b)(13) have been met for all waste excluded from regulation according to the provisions of this part. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I have been authorized, in writing, to make such declarations by the person in charge of the generator's demonstration.

(ii) Notifications of the exemption must be submitted by certified mail to the Regional Administrator. Notifications and all sampling and analysis records must be kept on-site for at least three years from the date of sampling. The three-year generator record retention period will be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Regional Administrator. Owners and operators must retain these records until the facility is closed.

(iii) As a condition of exclusion and for purposes of enforcing the conditions set out in this paragraph, any person qualifying for an exemption under this paragraph must, upon request of any duly designated representative of EPA, furnish information relating to waste

excluded under this paragraph and permit such representatives at all reasonable times to have access to, and to copy, all records relating to such waste, to enter the facility at reasonable times, and to inspect and obtain samples of such media and samples of any containers or labeling for such waste.

(iv) Respondents in actions to enforce this paragraph who raise a claim that a certain waste is exempt from regulation under this section must demonstrate, through appropriate documentation, satisfaction of all conditions necessary for the exemption.

(v) On or within 5 working days of submitting a first notification of exemption under this paragraph, the person claiming the exemption must submit a notice with the following information for publication in a major local newspaper of general circulation. The claimant must provide the Regional Administrator with certification of submitting the notice for publication. The claimant must also make the notification and all supporting data and documentation available for public review and copying, at a location at or near the facility, for sixty days following publication of the newspaper notice. The notice, which shall be entitled "Claim of Exemption from the Definition of Hazardous Waste under 40 CFR 261.4," must include:

(A) The name, address, RCRA ID number of the person seeking the exclusion, and identification of the exemption being sought;

(B) Description of the waste and EPA Hazardous Waste Number;

(C) Average and maximum monthly and annual amount of excluded media; and

(D) Name and address of the disposal facility;

(E) Name and address of the location where the notification provided to the Regional Administrator and all supporting data and documentation for the exemption can be viewed and copies by interested parties, and the length of time the information will remain available, and

(F) The name and address of the Regional Administrator where written comments on the exemption claim can be submitted.

(vi) The exclusion under this provision does not apply to:

(A) EPA Hazardous Waste Nos. F020, F021, F023, F024, F027, F028, K001, K009, K010, K017, K023, K024, K026, K027, K036, K037, K038, K039, K040, K043, K044, K045 K047, K099, K116 and P110 and 40 CFR 261.33 wastes that are not listed in appendix XI;

(B) Wastes containing any constituent in appendix XI that is quantitatable at a level that exceeds the exemption level under this paragraph for that constituent;

(C) Wastes when the actual detection limit for a constituent (other than 40 CFR part 261, appendix VII constituents for which the waste was listed) exceeds the quantitation limit specified for that constituent in appendix XII the applicable exemption level set forth in appendix XII is below that quantitation limit;

(D) Wastes that are diluted (rather than treated to reduce constituent loadings) to achieve the exemption levels set forth in appendix XII;

(E) Wastes that change or are changed over time from the waste characterized in the exemption determination due to reconstitution, process upsets or changes, or other factors affecting waste composition or leaching;

(F) The unit in which the exempt waste was managed prior to exemption, unless excluded under the provisions of 40 CFR 260.20 and 260.22; and

(G) Wastes that exhibit any of the characteristics of hazardous wastes listed in subpart C.

(14) Residuals from treatment, storage, and disposal of waste listed in subpart D that meet the applicable treatment standards under 40 CFR part 268 and the conditions of this paragraph and the applicable exemption levels specified in appendix XII to part 261 for contingent management exemptions:

(i) Before these hazardous wastes will be considered exempt from full regulation under this paragraph, the generator must comply with the following conditions:

(A) Sampling and analysis in accordance with the procedures and documentation requirements set forth in appendix XII that demonstrates that the constituent concentrations in the waste meet the applicable exemption levels in appendix XII. Sampling and analysis of wastes claiming an exemption under this paragraph must be repeated annually for the first two years the exemption claimed and every three years thereafter, and when changes to the production or treatment process (including upsets) occur that could affect waste composition;

(B) Notification of the Regional Administrator that an exemption is claimed for these wastes under this paragraph and certification that the constituent concentrations in the waste meet the exemption levels set forth in appendix XII that the waste will be disposed of in a unit meeting the design criteria of 40 CFR part 258, subpart D. Notifications of the exemption must be submitted by certified mail to the Regional Administrator and must be resubmitted annually for the first two years of the exemption and every three years thereafter, when changes to the production or treatment process (including upsets) occur that could affect waste composition, and when there are changes in the identity of the designated disposal facility. The notification must include:

(*1*) The name, address, and RCA ID number of the person seeking the exemption and identification of the type of exemption being claimed;

(*2*) EPA Hazardous Waste Number and description of the process generating the waste;

(*3*) Average and maximum monthly and annual amounts of excluded waste;

(*4*) Name and address of the disposal facility; and

(*5*) The following statement signed by the person seeking the exemption or his authorized representative:

Under penalty of criminal and civil prosecution for making or submission of false statements, representations, or omissions, I certify that the listed hazardous waste for which I assert an exemption from regulation according to the provisions of this part meet the exemption levels set forth in appendix XII to 40 CFR part 261 and that the disposal facility identified in this notification contains units meeting the design criteria of 40 CFR part 258, subpart D. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information upon which the claim of exemption is based is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(C) The wastes meet the applicable LDR requirements of 40 CFR part 268 and are disposed of in a unit meeting the design criteria of 40 CFR part 258, subpart D.

(ii) Prior to satisfaction of all conditions for the exemption under this paragraph, including the condition that the wastes are managed in accordance with the applicable management standards, the wastes are hazardous wastes subject to full subtitle C regulation.

(iii) Notifications, and all sampling and testing plans and records upon which an exemption claim is based must be kept on-site for at least three years from the date of sampling. The three-year generator record retention period will be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Regional Administrator. Owners and operators must retain these records until the facility is closed.

(iv) Any person qualifying for an exemption under this paragraph must, upon request of any duly designated representative of EPA, furnish information relating to wastes exempted under this paragraph and permit such representative at all reasonable times to have access to, and to copy, all records relating to such wastes, to enter the facility at reasonable times, and to inspect and obtain samples of such wastes and samples of any containers or labeling for such wastes.

(v) Respondents in actions to enforce this paragraph who raise a claim that a certain material is exempt from regulation under this section must demonstrate, through appropriate documentation, satisfaction of all conditions necessary for the exemption.

(vi) On or within 5 working days of submitting a first notification of exemption under this paragraph, the person claiming the exemption must submit a notice with the following information for publication in a major local newspaper of general circulation. The claimant must provide the Regional Administrator with certification of submitting the notice for publication. The claimant must also make the notification and all supporting data and documentation available for public review and copying, at a location at or near the facility, for sixty days following publication of the newspaper notice. The notice, which shall be entitled "Claim of Exemption from the Definition of Hazardous Waste under 40 CFR 261.4," must include:

(A) The name, address, RCRA ID number of the person seeking the exclusion, and identification of the exemption being sought;

(B) Description of the waste and EPA Hazardous Waste Number;

(C) Average and maximum monthly and annual amount of excluded media; and

(D) Name and address of the disposal facility;

(E) Name and address of the location where the notification provided to the Regional Administrator and all supporting data and documentation for the exemption can be viewed and copied by interested parties, and the length of time the information will remain available, and

(F) The name and address of the Regional Administrator where written comments on the exemption claim can be submitted.

(vii) The exclusion under this paragraph does not apply to:

(A) EPA Hazardous Waste Nos. F020, F021, F023, F024, F027, F028, K001, K009, K010, K017, K023, K024, K026, K027, K036, K037, K038, K039, K040, K043, K044, K045, K047, K099, K119 and P110 and 40 CFR 261.33 wastes that are not listed in appendix XII;

(B) Wastes containing any constituent in appendix XII that is quantitatable at a level that exceeds the exemption level under this paragraph for that constituent;

(C) Wastes when the actual detection limit for a constituent (other than 40 CFR part 261, appendix VII constituents for which the waste was listed) exceeds the quantitation limit specified for that constituent in appendix XII and the applicable exemption level set forth in appendix XII is below that quantitation limit;

(D) Wastes that are diluted (rather than treated to reduce constituent loadings) to achieve the exemption levels set forth in appendix XII;

(E) Wastes that change or are changed over time from the waste characterized in the exemption determination due to reconstitution, process upsets or changes, or other factors affecting waste composition or leaching;

(F) The unit in which the exempt waste was managed prior to exemption, unless excluded under the provisions of 40 CFR 260.20 and 260.22; and

(G) Wastes that exhibit any of the characteristics of hazardous wastes listed in subpart C.

Appendix VIII—Amended

6. In appendix VIII of part 261, add the following hazardous constituents in alphabetical order:

Appendix VIII—Hazardous Constituents

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Acenaphthene	Acenaphthylene, 1,2-dihydro	83-32-9	
Acetaldehyde		75-07-0	U001
Acetone	2-Propanone	67-64-1	U002
* * *	* * *	* * *	*
Acrylic acid		79-10-7	U008
* * *	* * *	* * *	*
Benzo(k) fluoranthene	Same	201-08-9	
Benzyl alcohol	Benzenemethanol	100-51-6	
* * *	* * *	* * *	*
n-Butyl alcohol		71-36-3	U031
* * *	* * *	* * *	*
Chlorodibromo-methane; Dibromo-chloromethane	Methane, dibromochloro-	124-48-1	
* * *	* * *	* * *	*
Cumene		98-82-8	U055
* * *	* * *	* * *	*
Cyclohexanone		108-94-1	U057
Di-n-butyl phthalate	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	U069
* * *	* * *	* * *	*
Dimethylamine		124-40-3	U092
* * *	* * *	* * *	*
1,4-Dioxane	Same	123-91-1	U108
* * *	* * *	* * *	*
Ethyl acetate		141-78-6	U112
* * *	* * *	* * *	*
Ethylbenzene	Benzene, ethyl-	100-41-4	
* * *	* * *	* * *	*
Ethyl ether		60-29-7	U117
* * *	* * *	* * *	*
Furan		110-00-9	U124
* * *	* * *	* * *	*

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Isophorone	2-Cyclohexen-1-one, 3,5,5-trimethyl	78-59-1	
* * *	* * *	*	
Methanol		67-56-1	U154
* * *	* * *	*	
Methyl isobutyl ketone		108-10-1	U161
* * *	* * *	*	
Phenanthrene	Same	85-01-8	
* * *	* * *	*	
Styrene	Benzene, ethenyl	100-42-5	
* * *	* * *	*	
Vanadium	Same	Total	
* * *	* * *	*	
Xylene	Benzene, dimethyl	1330-20-7	U239
* * *	* * *	*	
Zinc	Same	Total	
* * *	* * *	*	

7. At the end of part 261, appendices XI, XII and XIII are added to read as follows:

Appendix XI—CBEC for Media

Common name [1]	Chemical abstract No. [2]	Tier 1				Tier 2		
		Exemption levels for soils [3] (mg/kg)	EQC for soils [4] (mg/kg)	Possible SW-846 method for soils [5]	Exemption levels for leachate [6] (mg/L)	EQC for leachate (mg/L)	Possible SW-846 method for leachate	Exemption levels for leachate [7] (mg/L)
Acenaphthene	83-32-9	1000	0.7	8270	20	0.01	8270	200
Acetone (2-propanone)	67-64-1	1000	.1	8240	40	.1	8240	400
Acetonitrile (methyl cyanide)	75-05-8	500	.1	8240	2	.1	[12] 8240	20
Acetophenone	98-86-2	1000	.7	8270	40	.01	8270	400
Acrolein	107-02-8	1000	.005	8240	7	.005	[12] 8240	70
Acrylamide	79-06-1	.2	.1	8260	8E-5	.1	8260	0.008
Acrylonitrile	107-13-1	.2	.005	8240	6E-4	.005	[12] 8240	.06
Aldrin	309-00-2	.07	.003	8080	2E-5	4E -5	8080	.002
Aniline (benzeneamine)	62-53-3	200	.7	8270	0.06	.01	8270	6
Antimony (and compounds N.O.S.)	7440-36-0	30	20	6010	0.1	.03	7041	1
Aramite	140-57-8	40	1	8270	0.01	.02	8270	1
Arsenic (and compounds N.O.S.)	7440-38-2	20	.7	7060	0.5	.01	7060	5
Barium (and compounds N.O.S.)	7440-39-3	1000	1	6010	20	.02	6010	200
Benz[a]anthracene	6-55-3	.05	.009	8310	0.001	1E -4	8310	.01
Benzene	71-43-2	40	.005	8260	0.05	.005	8260	.5
Benzidine	92-87-5	.005	2	8270	2E -6	.03	8270	2E -4
Benzo(b)fluoranthene	205-99-2	.1	.01	8310	0.002	2E -4	8310	.02
Benzo(a)pyrene	50-32-8	.2	.02	8310	0.002	2E -4	8310	.02
Benzotrichloride	98-07-7	.09	.004	8121	3E -5	6E -5	8121 /8	.003
Benzyl alcohol	100-51-6	1000	1	8270	100	.02	8270	1000
Benzyl chloride	100-44-7	.7	.1	8121	0.002	.002	8121	.2
Beryllium (and compounds N.O.S.)	7440-41-7	0.3	.2	6010	0.01	.003	6010	.1
Bis(2-chloroethyl) ether	111-44-4	.1	.7	8270	3E -4	.003	8110	.03
Bis(2-chloroisopropyl) ether	39638-32-9	20	.7	8270	0.005	.01	8270	.5
Bis(2-ethylhexyl) phthalate	117-81-7	80	.7	8270	.04	.01	8270	.4
Bromodichloromethane	75-27-4	9	.005	8260	.003	.005	8260	.3
Bromomethane	74-83-9	100	.005	8260	.5	.005	8260	.5
Butanol	71-36-3	1000	.1	8240	40	.1	8240	400
Butyl benzyl phthalate	85-68-7	1000	.7	8270	1	.01	8270	10
2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	80	.01	8150	.07	7D -5	8150	.7
Cadmium (and compounds N.O.S.)	7440-43-9	40	3	6010	.05	.001	7131	.5
Carbon disulfide	75-15-0	1000	.1	8240	40	.1	8240	400
Carbon tetrachloride	56-23-5	9	.005	8260	.05	.005	8260	.5
Chlordane	57-74-9	0.9	.009	8080	.02	1E -4	8080	.2
p-Chloroaniline	106-47-8	300	1	8270	1	.02	8270	10
Chlorobenzene	108-90-7	1000	.005	8260	1	.005	8260	10
Chlorobenzilate	510-15-6	1000	.7	8270	7	.01	8270	70
2-Chloro-1,3-butadiene (chloroprene)	126-99-8	1000	.005	8260	7	.005	8260	70
Chlorodibromomethane	124-48-1	10	.005	8260	.004	.005	8260	.4
Chloroform	67-66-3	200	.005	8260	.06	.005	8260	6
Chloromethane (Methyl Chloride)	74-87-3	90	.005	8260	.03	.005	8260	3
2-Chlorophenol	95-57-8	400	.7	8270	2	.01	8270	20
3-Chloropropene (allyl chloride)	107-05-1	50	.005	8240	.02	.005	8240	2
Chromium (and compounds N.O.S.)	7440-47-3	400	5	6010	1	.01	7191	10
Chrysene	218-01-9	10	.1	8310	.002	.002	8310	.02
Cresols	1319-77-3	1000	.7	8270	20	.01	8270	200
Cumene	98-82-8	1000	.005	8240	10	.005	8240	100

APPENDIX XI—CBEC FOR MEDIA—Continued

Common name [1]	Chemical abstract No. [2]	Tier 1				Tier 2		
		Exemption levels for soils [3] (mg/kg)	EQC for soils [4] (mg/kg)	Possible SW-846 method for soils [5]	Exemption levels for leachate [6] (mg/L)	EQC for leachate (mg/L)	Possible SW-846 method for leachate	Exemption levels for leachate [7] (mg/L)
Cyanide (amenable)	57-12-5	1000	.04	9010	2	.04	9010	20
2,4-Dichlorophenoxyacetic acid (2,4-D)	94-75-7	800	1	8150	.7	.002	8150	7
DDD	72-54-8	5	.007	8080	.001	1E -4	8080	.1
DDE	72-55-9	3	.003	8080	.001	4E -5	8080	.1
DDT	50-29-3	3	.008	8080	.001	1E -4	8080	.1
Diallate	2303-16-4	20	.7	8270	.006	.01	8270	.6
Dibenz(a,h)anthracene	53-70-3	.02	.02	8310	.003	3E -4	8310	.03
1,2-Dibromo-3-chloropropane	96-12-8	.8	.005	8260	.002	3E -5	8011	.02
Dibromomethane (methylene bromide)	74-95-3	800	.005	8260	4	.005	8260	40
1,2-Dichlorobenzene	95-50-1	1000	.01	8260	6	.01	8260	60
1,4-Dichlorobenzene	106-46-7	50	.005	8260	.75	.005	8260	7.5
3,3'-Dichlorobenzidine	91-94-1	2	1	8270	3E -4	.02	8270	.08
Dichlorodifluoromethane	75-71-8	1000	.005	8260	70	.005	8260	700
1,1-Dichloroethane	75-34-3	1000	7E -4	8021	40	7E -4	8021	400
1,2-Dichloroethane	107-06-2	10	.005	8260	.05	.005	8260	.5
1.1-Dichloroethylene	75-35-4	2	.005	8260	.07	.005	8260	.7
cis-1,2-Dichloroethylene	156-60-5	800	.005	8260	.7	.005	8260	7
trans-1,2-Dichloroethylene	156-60-5	1000	.005	8260	1	.005	8260	10
Dichloromethane (Methylene Chloride)	75-09-2	100	.005	8240	.05	.005	8240	.5
2,4-Dichlorophenol	120-83-2	200	.7	8270	1	.01	8270	10
1,2-Dichloropropane	78-87-5	20	.005	8260	.05	.005	8260	.5
1,3-Dichloropropene	542-75-6	6	.005	8240	.002	.005	8240	.2
Dieldrin	60-57-1	.07	.001	8080	2E -5	2E -5	8080	.002
Diethyl phthalate	84-66-2	1000	.7	8270	300	.01	8270	3000
Diethylstibestrol	56-53-1	2E -4	.3	8270	7E -8	.02	8270	7E -6
Dimethoate	60-51-5	20	.1	8141	.07	.003	8141	.7
3,3'-Dimethoxybenzidine	119-90-4	80	7	8270	.03	.1	8270	3
7,12-Dimethylbenz(a)anthracene	57-97-6	0.05	.7	8270	1E -5	.01	8270	.001
3,3'-Dimethylbenzidine	119-93-7	.1	.7	8270	4E -5	.01	8270	.004
2,4-Dimethylphenol	105-67-9	1000	.7	8270	7	.01	8270	70
Dimethyl phtalate	131-11-3	1000	.7	8270	400	.01	8270	4000
1,3-Dinitrobenzene	25154-54-5	8	.3	8330	.04	.004	8330	.4
2,4-Dinitrophenol	51-28-5	200	3	8270	.7	.05	8270	7
2,4-Dinitrotoluene	121-14-2	2	.7	8270	5E -4	.01	8270	.05
2,6-Dinitrotoluene	606-20-2	.2	.7	8270	5E -4	.01	8270	.05
Di-n-butyl phthalate	84-74-2	1000	.7	8270	40	.01	8270	400
Di-n-octyl phthalate	117-84-0	1000	.7	8270	7	.01	8270	70
1,4-Dioxane	123-91-1	100	.1	8260	.03	.1	[12] 8260	3
2378 TCDDioxin	1746-01-6	7E -6	1E -6	8290	5E -7	1E -8	8290	5E -6
2378 PeCDDioxins		1E -5	1E -6	8290	4E -9	1E -8	8290	4E -7
2378 HxCDDioxins		7E -5	2.5E -6	8290	2E -8	2.5E -8	8290	2E -6
2378 HpCDDioxins		7E -4	2.5E -6	8290	2E -7	2.5E -8	8290	2E -5
OCDD	3268-87-9	7E -3	5E -6	8290	2E -6	5E -8	8290	2E -4
Diphenylamine	122-39-4	1000	.7	8270	9	.01	8270	90
1,2-Diphenylhydrazine	122-66-7	1	.3	8270	4E -4	.01	8270	.04
Disulfoton	298-04-4	3	.04	8141	.01	7E -4	8141	.1
Endosulfan	115-29-7	4	.009	8080	.02	1E -4	8080	.2
Endrin	72-20-8	20	.004	8080	.02	6E -5	8080	.2
Epichlorohydrin	106-89-8	100	.1	8010	.04	.1	[12] 8010	4
2-Ethoxyethanol	110-80-5	1000	1	8260	100	1	[12] 8260	1000
Ethyl acetate	141-78-6	100	.1	8240	300	.1	8240	3000
Ethylbenzene	100-41-4	1000	.005	8260	7	.005	8260	70
Ethyl ether	60-29-7	1000	.1	8240	70	.1	8240	700
Ethyl methacrylate	97-63-2	1000	.005	8240	30	.005	8240	300
Ethyl methanesulfonate	62-50-0	0.004	1	8270	1E -6	0.02	8270	1E -4
Ethylene dibromide	106-93-4	0.01	.005	8260	5E -4	3E -4	8011	.005
Famphur	52-85-7	3	1	8270	0.01	0.02	8270	.1
Fluoranthene	206-44-0	1000	.7	8270	10	0.01	8270	100
Fluorene	86-73-7	1000	.1	8310	10	0.002	8310	100
Formic acid	64-18-6	1000	.2	8015	70	0.2	8015	7000
Furan	110-00-9	80	.1	8240	0.4	0.1	8240	4
2378 TCDFuran	51207-31-9	7E -5	1E -6	8290	2E -8	1E -8	8290	2E -6
12378 PeCDFuran		1E -4	1E -6	8290	4E -8	1E -8	8290	4E -6
23478 PeCDFuran	57117-31-4	1E -5	1E -6	8290	4E -9	1E -8	8290	4E -7
2378 HxCDFurans		7E -5	2.5E -6	8290	2E -8	2.5E -8	8290	2E -6
2378 HpCDFurans		7E -4	2.5E -6	8290	2E -7	2.5E -8	8290	2E -5
OCDF		7E -3	5E -6	8290	2E -6	5E -8	8290	2E -4
Heptachlor	76-44-8	0.2	.002	8080	0.004	3E -5	8080	.04
Heptachlor epoxide	1024-57-3	0.1	.06	8080	0.002	8E -4	8080	.02
Hexachlorobenzene	118-74-1	0.7	.004	8121	0.01	6E -5	8121	.1
Hexachloro-1,3-butadiene	87-68-3	10	.005	8260	0.004	0.005	8260	.4
alpha-HCH	319-84-6	0.2	.002	8080	6E -5	3E -5	8080	.006
beta-HCH	319-85-7	0.6	.004	8080	2E -4	6E -5	8080	.02
Hexachlorocyclopentadiene	77-47-4	600	.2	8121	0.5	0.002	8121	5

APPENDIX XI—CBEC FOR MEDIA—Continued

Common name [1]	Chemical abstract No. [2]	Tier 1				Tier 2		
		Exemption levels for soils [3] (mg/kg)	EQC for soils [4] (mg/kg)	Possible SW-846 method for soils [5]	Exemption levels for leachate [6] (mg/L)	EQC for leachate (mg/L)	Possible SW-846 method for leachate	Exemption levels for leachate [7] (mg/L)
Hexachloroethane	67-72-1	80	.001	8121	0.03	2E -5	8121	3
Hexachlorophene	70-30-4	20	3	8270	0.1	0.05	8270	1
Indeno(1,2,3-cd)pyrene	193-39-5	10	.03	8310	0.004	4E -4	8310	.04
Isobutyl alcohol	78-83-1	1000	.1	8240	100	0.1	[12] 8240	1000
Isophorone	78-59-1	300	.7	8270	.09	.01	8270	9
Kepone	143-50-0	.02	1	8270	7E -6	.02	8270	7E -4
Lead (and compounds N.O.S.)	7439-92-1	500 /9	30	6010	.15	.01	7421	1.5
Lindane (gamma-HCH)	58-89-9	.9	.02	8121	.002	2E -4	8121	.02
Mercury (and compounds N.O.S.)	7439-97-6	20	.1	7470	.02	.002	7470	.2
Methacrylonitrile	126-98-7	8	.03	8240	.04	.03	[12] 8240	.4
Methanol	67-56-1	1000	.1	8240	200	.1	8240	2000
Methoxychlor	72-43-5	400	.1	8080	.4	.002	8080	4
3-Methylcholanthrene	56-49-5	.04	.7	8270	1E -5	.01	8270	.001
Methyl ethyl ketone	78-93-3	1000	.1	8240	20	.1	[12] 8240	200
Methyl isobutyl ketone	108-10-1	1000	.1	8240	20	.1	[12] 8240	200
Methyl methacrylate	80-62-6	1000	.05	8240	30	.005	8240	300
Methyl parathion	298-00-0	20	.7	8270	.09	.01	8270	.9
Naphthalene	91-20-3	1000	.005	8260	10	.005	8260	100
2-Naphthylamine	91-59-8	1	.7	8270	4E -4	.01	8270	.04
Nickel (and compounds N.O.S.)	7440-02-0	1000	10	6010	1	.2	6010	10
Nitrobenzene	98-95-3	40	.7	8270	.2	.01	8270	2
2-Nitropropane	79-46-9	.1	.1	8260	4E -5	.1	8260	.004
N-Nitroso-di-n-butylamine	924-16-3	.2	.7	8270	6E -5	.01	8270	.006
N-Nitaroso-diethylamine	55-18-5	.007	1	8270	2E -6	.02	8270	2E -4
N-Nitrosodimethylamine	62-75-9	.02	.7	8270	7E -6	.01	8270	7E -4
N-Nitrosodiphenylamine	86-30-6	200	.7	8270	.07	.01	8270	7
N-Nitrosodi-n-propylamine	621-64-7	.2	.7	8270	5E -5	.01	8270	.005
N-Nitrosomethylethylamine	10595-95-6	.05	.7	8270	2E -5	.01	8270	.002
N-Nitrosopiperidine	100-75-4	.03	1	8270	9E -6	.02	8270	9E -4
N-Nitrosopyrrolidine	930-55-2	.5	3	8270	2E -4	.04	8270	2E -2
Octamethyl pyrophosphoramide	152-16-9	200	10	8270	.7	.2	8270	7
Parathion	56-38-2	500	.7	8270	2	.01	8270	20
Nentachlorobenzene	608-93-5	60	.03	8121	.3	4E -4	8121	3
Pentachloronitrobenzene (PCNB)	82-68-8	4	1	8270	.001	.02	8270	.1
Pentachlorophenol	87-86-5	9	3	8270	.01	.05	8270	.1
Phenol	108-95-2	1000	.7	8270	200	.01	8270	2000
Phenylenediamine /10		20	.7	8270	.007	.01	8270	.7
Phorate	298-02-2	20	.02	8141	.07	4E -4	8141	.7
Phtalic anhydride	85-44-9	1000	7	8270	700	.1	8270 /11	7000
Polychloriinated biphenyls	1336-36-3	10 /9	.04	8080	.005	73 -4	8080	.05
Pronamide	23950-58-5	1000	.7	8270	30	.01	8270	300
Pyrene	129-00-0	1000	.7	8270	10	.01	8270	100
Pyridiine	110-86-1	80	.005	8240	.4	.005	8240	4
Safrole	94-59-7	6	.7	8270	.002	.01	8270	.2
Selenium (and compounds N.O.S.)	7782-49-2	400	50	6010	.5	.02	7740	5
Silver (and compounds N.O.S.)	7440-22-4	400	5	6010	2	.002	7761	20
Strychnine and salts	57-24-9	20	3	8270	.1	.04	8270	1
Styrene	100-42-5	1000	1E -4	8021	1	1E -4	8021	10
1,2,4,5-Tetrachlorobenzene	95-94-3	20	.006	8121	.1	1E -4	8121	1
1,1,1,2-Tetrachloroethane	630-20-6	40	.005	8260	.01	.005	8260	1
1,1,2,2-Tetrachloroethane	79-34-5	6	5E -5	8021	.002	5E -5	8021	.2
Tetrachloroethylene	127-18-4	800	.005	8260	.05	.005	8260	.5
2,3,4,6-Tetrachlorophenol	935-95-5	1000	.7	8270	10	.01	8270	100
Tetraethyl dithiopyrophosphate	3689-24-5	40	.7	8270	.2	.01	8270	2
Thallium (and compounds N.O.S)	7440-28-0	6	30	6010	.02	.01	7841	.2
Toleune	108-88-3	1000	.005	8260	10	.005	8260	100
2,4-Toleuenediamine	95-80-7	.4	1	8270	1E -4	.02	8270	.01
2,6-Toleuenediamine	823-40-5	1000	.7	8270	70	.02	8270	700
o-Toluidine	95-53-4	5	.7	8270	.001	.01	8270	.1
p-Toluidine	106-49-0	6	.3	8270	.002	.01	8270	.2
Toxaphene	8001-35-2	1	.2	8080	.03	.002	8080	.3
Tribromomethane (Bromoform)	75-25-2	100	.005	8260	.04	.005	8260	4
1,2,4-Trichlorobenzene	120-82-1	800	.7	8270	.09	.01	8260	.9
1,1,1-Trichloroethane	71-55-6	1000	.005	8260	2	.005	8260	20
1,1,2-Trichloroethane	79-00-5	20	.005	8260	.05	.005	8260	.5
Trichloroethylene	79-01-6	100	.005	8260	.05	.005	8260	.5
Trichlorofluoromethane	75-69-4	1000	.005	8260	100	.005	8260	1000
2,4,5-Trichlorophenol	95-95-4	1000	.7	8270	40	.01	8270	400
2,4,6-Trichlorophenol	88-06-2	100	.7	8270	.03	.01	8270	3
2,4,5-Trichlorophenoxyacetic acid	93-76-5	800	2	8150	4	.002	8150	40
2,4,5-TP (Silvex)	93-72-1	600	2	8150	.5	.002	8150	5
1,2,3-Trichloropropane	96-18-4	500	.005	8260	2	.005	8260	20
1,1,2-Trichloro-1,2,2-trifluoroethane	354-58-5	1000	.005	8260	1E 4	.005	8260	1E 5
sym-Trinitrobenzene	99-35-4	4	.7	8270	.02	.01	8270	.2

APPENDIX XI—CBEC FOR MEDIA—Continued

Common name [1]	Chemical abstract No. [2]	Tier 1				Tier 2		
		Exemption levels for soils [3] (mg/kg)	EQC for soils [4] (mg/kg)	Possible SW-846 method for soils [5]	Exemption levels for leachate [6] (mg/L)	EQC for leachate (mg/L)	Possible SW-846 method for leachate	Exemption levels for leachate [7] (mg/L)
Tris(2,3-dibromopropyl)phosphate	126-72-7	.1	10	8270	3E -5	.2	8270	.004
Vanadium	7440-62-2	600	5	6010	2	.08	6010	20
Vinyl chloride (Chloroethene)	75-01-4	.6	2E -4	8021	.02	2E -4	8021	.2
Xylenes	1330-20-7	1000	.005	8260	100	.005	8260	1000
Zinc (and compounds N.O.S.)	7440-66-6	1000	1	6010	70	.02	6010	700

[1] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.
[2] Chemical Abstracts Service registry number. Where "and compounds N.O.S." is entered, all species of the metal are included.
[3] Soils must be analyzed for all constituents on the CBEC list. If any of the constituent concentrations exceed the CBEC, the contaminated soil fails the Tier 1 CBEC demonstration. The exemption concentrations are based on health-based numbers.
[4] Exemption Quantitation Criteria (EQC). When a specified exemption level is below its specified EQC, the exemption demonstration must achieve an actual detection limit which is at least as low as the specified EQC. In these cases, if the demonstration shows that the constituent cannot be quantified above the CBEC, and the actual detection limit is equal to or below the EQC, the Agency will assume that the constituent is not present at levels of regulatory concern. If the actual detection limit exceeds the EQC for the specified constituent, the demonstration is considered invalid.
[5] Possible analytical methods refer to procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste", Third Edition, November 1986, as revised, December 1987, for the methods used. Methods listed are believed to be capable of routinely determining concentrations of the respective analytes at the EQC or below. Other methods are permissible if a laboratory can demonstrate it is capable of achieving the EQCs for given analytes, while still adhering to the quality control guidance given in Chapter One of SW-846. Operators must report the concentrations actually determined by the method chosen, even if they are below the EQC.
[6] Groundwater and SW-846 Method 1311 leachate must be analyzed for all constitutents on the exemption list. If any of the constituent concentrations exceed the CBEC concentrations, the waste fails the Tier 1 CBEC demonstration. The exemption concentrations are based on health-based numbers, a risk level of 10^{-6}, and Maximum Contaminant Levels and include a dilution attenuation factor (DAF) of 10.
[7] Groundwater and SW-846 Method 1311 leachate must be analyzed for all constituents on the exemption list. If any of the constituent concentrations exceed the CBEC concentrations, the wast fails the Tier 2 CBEC demonstration. The exemption concentrations are based on health-based numbers, a risk level of 10^{-5}, and Maximum Contaminant Levels and include a dilution attenuation factor (DAF) of 100.
[8] Benzotrichloride is hydrolytically unstable. Analyze for benzoic acid.
[9] CBEC for soil is based on EPA policy decison.
[10] CBEC concentrations are based on toxicity data for o-phenylenediamine. Method 8270 does not specify retention times for the three isomers, thus the lowest available toxicity data for the isomers is used as a worst-case scenario.
[11] Phthalic anhydride is hydrolytically unstable. Analyze for phthalic acid.
[12] Indicates constitutent should be analyzed via direct injection.

APPENDIX XII—CBEC FOR WASTE

Common name [1]	Chemical Abstract No. [2]	Tier 1			Tier 2
		Exemption levels for leachate [3] (mg/L)	EQC for leachate [4] (mg/L)	Possible SW-846 method for leachate [5]	Exemption Levels for leachate [6] (mg/L)
Acenaphthene	83-32-9	20	0.01	8270	200
Acetone (2-propanone)	67-41-1	40	.1	8240	400
Acetonitrile (methyl cyanide)	75-05-8	2	.1	[10] 8240	20
Acetophenone	98-86-2	40	.01	8270	400
Acrolein	107-02-8	7	.005	[10] 8240	70
Acrylamide	79-06-1	8E -5	.1	[10] 8260	0.008
Acrylonitrile	107-13-1	6E -4	.005	[10] 8240	.06
Aldrin	309-002-2	2E -5	4E -5	8080	.002
Aniline (benzeneamine)	62-53-3	0.06	.01	8270	6
Antimony (and compounds N.O.S.)	7440-36-0	.1	.03	7041	1
Aramite	140-57-8	.01	.02	8270	1
Arsenic (and compound N.O.S)	7440-38-2	.5	.01	7060	5
Barium (and compounds N.O.S.)	7440-39-3	20	.02	6010	200
Benz[a]anthracene	6-55-3	.001	1E -4	8310	.01
Benzene	71-43-2	.05	.005	8260	.5
Benzidine	92-87-5	2E -6	.03	8270	2E -4
Benzo(b)fluoranthene	205-99-2	.002	2E -4	8310	.02
Benzo(a)pyrene	50-32-8	.002	2E -4	8310	.02
Benzotrichloride	98-07-7	3E-5	6E -5	8121 /7	.003
Benzyl alcohol	100-51-6	100	.02	8270	1000
Benzyl chloride	100-44-7	.002	.002	8121	.2
Beryllium (and compounds N.O.S.)	7440-41-7	.01	.003	6010	.1
Bis(2-chloroethyl) ether	111-44-4	3E -4	.003	8110	.03
Bis(2-chloroisopropyl) ether	39638-32-9	.005	.01	8270	.5
Bis(2-ethylhexyl) phthalate	117-81-7	.04	.01	8270	.4
Bromodichloramethane	75-27-4	.003	.005	8260	.3
Bromomethane	74-83-9	0.5	.005	8260	5
Butanol	71-36-3	40	.1	8240	400
Butyl benzyl phthalate	85-68-7	1	.01	8270	10
2-sec-Butyl 4, 6-dinitrophenol (Dinoseb)	88-85-7	.07	7E -5	8150	.7
Cadmium (and compounds N.O.S.)	7440-43-9	.05	.001	7131	0.5
Carbon disulfide	75-15-0	40	.1	[10] 8240	400
Carbon tetrachloride	56-23-5	.05	.005	8260	.5
Chlordane	57-74-9	.02	1E -4	8080	.2
p-Chloroaniline	106-47-8	1	.02	8270	10

APPENDIX XII—CBEC FOR WASTE—Continued

Common name[1]	Chemical Abstract No.[2]	Tier 1			Tier 2
		Exemption levels for leachate[3] (mg/L)	EQC for leachate[4] (mg/L)	Possible SW-846 method for leachate[5]	Exemption Levels for leachate[6] (mg/L)
Chlorobenzene	108-90-7	1	.005	8260	10
Chlorobenzilate	510-15-6	7	.01	8270	70
2-Chloro-1,3-butadiene (chloroprene)	126-99-8	7	.005	8260	70
Chlorodibromomethane	124-48-1	.004	.005	8260	.4
Chloroform	67-66-3	.06	.005	8260	6
Chloromethane (Methyl Chloride)	74-87-3	.03	.005	8260	3
2-Chlorophenol	95-57-8	2	.01	8270	20
3-Chloropropene (allyl chloride)	107-05-1	.02	.005	8240	2
Chromium (and compounds N.O.S.)	7440-47-3	1	.01	7191	10
Chrysene	218-01-9	.002	.002	8310	.02
Cresols	1319-77-3	20	.01	8270	200
Cumene	98-82-8	10	.005	8240	100
Cyanide (amenable)	57-12-5	2	.04	9010	20
2,4-Dichlorophenoxyacetic acid (2,4-D)	94-75-7	0.7	.002	8150	7
DDD	72-54-8	.001	1E -4	8080	.1
DDE	72-55-9	.001	4E -5	8080	.1
DDT	50-29-3	.001	1E-4	8080	.1
Diallete	2303-16-4	.006	.01	8270	.6
Dibenz(a,h)anthracene	53-70-3	.003	3E -4	8310	.03
1,2-Dibromo-3-chloropropane	96-12-8	.002	3E -5	8011	.02
Dibromomethane (methylene bromide)	74-95-3	4	.005	8260	40
1,2-Dichlorobenzene	95-50-1	6	.01	8260	60
1,4-Dichlorobenzene	106-46-7	.75	.005	8260	7.5
3,3[1] -Dichlorobenzidine	91-94-1	8E -4	.02	8270	.08
Dichlorodifluoromethane	75-71-8	70	.005	8260	700
1,1-Dichloroethane	75-34-3	40	7E -4	8021	400
1,2-Dichloroethane	107-06-2	.05	.005	8260	.5
1,1-Dichloroethylene	75-35-4	.07	.005	8260	.7
cis-1,2-Dichloroethylene	156-60-5	.7	.005	8260	7
trans-1,2-Dichloroethylene	156-60-5	1	.005	8260	10
Dichloromethane (Methylene Chloride)	75-09-2	.05	.005	8240	.5
2,4-Dichlorophenol	120-83-2	1	.01	8270	10
1,2-Dichloropropane	78-87-5	.05	.005	8260	.5
1,3-Dichloropropene	542-75-6	.002	.005	8240	.2
Dieldrin	60-57-1	2E -5	2E -5	8080	.002
Diethyl phthalate	84-66-2	300	.01	8270	3000
Diethylstilbestrol	56-53-1	7E -8	.02	8270	7E -6
Dimethoate	60-51-5	.07	.003	8141	.7
3,3[1] -Dimethoxybenzidine	119-90-4	.03	.1	8270	3
7,12-Dimethylbenz(a)anthracene	57-97-6	1E -5	.01	8270	.001
3,3[1] -Dimethylbenzidine	119-937	4E -5	.01	8270	.004
2,4-Dimethylphenol	105-67-9	7	.01	8270	70
Dimethyl phthalate	131-11-3	400	.01	8270	4000
1,3-Dinitrobenzene	25154-54-5	.04	.004	8330	.4
2,4-Dinitrophenol	51-28-5	.7	.05	8270	7
2,4-Dinitrotoluene	121-14-2	5E -4	.01	8270	.05
2,6-Dinintrotoluene	606-20-2	5E -4	.01	8270	.05
Di-n-butyl phthalate	84-74-2	40	.01	8270	400
Di-n-octyl phthalate	117-84-0	7	.01	8270	70
1,4-Dioxane	123-91-1	.03	.1	[10] 8260	3
2378 TCDDioxin	1746-01-6	5E -7	1E -8	8290	5E -6
2378 PeCDDioxins		4E -9	1E -8	8290	4E -7
2378 HxCDDioxins		2E -8	2.5E -8	8290	2E -6
2378 HpCDDioxins		2E -7	2.5E -8	8290	2E -5
OCDD	3268-87-9	2E -6	5E -8	8290	2E -4
Diphenylamine	122-39-4	9	.01	8270	90
1,2-Diphenylhydrazine	122-66-7	4E -4	.01	8270	.04
Disulfoton	298-04-4	.01	7E -4	8141	.1
Endosulfan	115-29-7	.02	1E -4	8080	.2
Endrin	72-20-8	.02	6E -5	8080	.2
Epichlorohydrin	106-89-8	.04	.1	[10] 8010	4
2-Ethoxyethanol	110-80-5	100	1	[10] 8260	1000
Ethyl acetate	141-78-6	300	.1	8240	3000
Ethylbenzene	100-41-4	7	.005	8260	70
Ethyl ether	60-29-7	70	.1	8240	700
Ethyl methacrylate	97-63-2	30	.005	8240	300
Ethyl methanesulfonate	62-50-0	1E -6	.02	8270	1E -4
Ethylene dibromide	106-93-4	5E -4	3E -4	8011	.005
Famphur	52-85-7	.01	.02	8270	.1
Fluoranthene	206-44.0	10	.01	8270	100
Fluorene	86-73-7	10	.002	8310	100
Formic acid	64-18-6	70	.2	[10] 8015	7000
Furan	110-00-9	.4	.1	8240	4
2378 TCDFuran	51207-31-9	2E -8	1E -8	8290	2E -6
12378 PeCDFuran		4E -8	1E -8	8290	4E -6

APPENDIX XII—CBEC FOR WASTE—Continued

Common name[1]	Chemical Abstract No.[2]	Tier 1			Tier 2
		Exemption levels for leachate[3] (mg/L)	EQC for leachate[4] (mg/L)	Possible SW-846 method for leachate[5]	Exemption Levels for leachate[6] (mg/L)
23478 PeCDFuran	57117-31-4	4E -9	1E -8	8290	4E -7
2378 HxCDFurans		2E -8	2.5E -8	8290	2E -6
2378 HpCDFurans		2E -7	2.5E -8	8290	2E -5
OCDF		2E -6	5E -8	8290	2E -4
Heptachlor	76-44-8	.004	3E -5	8080	.04
Heptachlor epoxide	1024-57-3	.002	8E -4	8080	.02
Hexachlorobenzene	118-74-1	.01	6E -5	8121	.1
Hexachloro-1,3-butadiene	87-68-3	.004	.005	8260	.4
alpoha-HCH	319-84-6	6E -5	3E -5	8080	.02
beta-HCH	319-85-7	2E -4	6E -5	8080	.02
Hexachlorocyclopentadiene	77-47-4	.5	.002	8121	5
Hexachloroethane	67-72-1	.03	2E -5	8121	3
Hexachlorophene	70-30-4	.1	.05	8270	1
Indeno(1,2,3-cd)pyrene	193-39-5	.004	4E -4	8310	.04
Isobutyol alcohol	78-83-1	100	.1	[10] 8240	1000
Isophorone	78-59-1	.09	.01	8270	9
Kepone	143-50-0	7E -6	.02	8270	7E -4
Lead (and compounds N.O.S.)	7439-92-1	.15	.01	7421	1.5
Lindane (gamma-HCH)	58-89-9	.002	2E -4	8121	.02
Mercury (and compounds N.O.S.)	7439-97-6	.02	.002	7470	.2
Methacrylonitrile	126-98-7	.04	.03	[10] 8240	.4
Methanol	67-56-1	200	.1	8240	2000
Methoxychlor	72-43-5	.4	.002	8080	4
3-Methylcholanthrene	56-49-5	1E -5	.01	8270	.001
Methyl ethyl ketone	78-93-3	20	.1	[10] 8240	200
Methyl isobutyl ketone	108-10-1	20	.1	[10] 8240	200
Methyl methacrylate	80-62-6	30	.005	8240	300
Methyl parathion	298-00-0	.09	.01	8270	.9
Naphthalene	91-20-3	10	.005	8260	100
2-Naphthylamine	91-59-8	4E -4	.01	8270	0.04
Nickel (and compounds N.O.S.)	7440-02-0	1	.2	6010	10
Nitrobenzene	98-95-3	.2	.01	8270	2
2-Nitropropane	79-46-9	4E -5	.1	8260	.004
N-Nitroso-di-n-butylamine	924-16-3	6E -5	.01	8270	.006
N-Nitroso-diethylamine	55-18-5	2E -6	.02	8270	2E -4
N-Nitrosodimethylamine	62-75-9	7E -6	.01	8270	7E -4
N-Nitrosodiphenylamine	86-30-6	.07	.01	8270	7
N-Nitrosodi-n-propylamine	621-64-7	5E -5	.01	8270	.005
N-Nitrosomethylethylamine	10595-95-6	2E -5	.01	8270	.002
N-Nitrosopiperidine	100-75-4	9E -6	.02	8270	9E -4
N-Nitrosopyrrolidine	930-55-2	2E -4	.04	8270	2E -2
Octamethyl pyrophosphoramide	152-16-9	.7	.2	8270	7
Parathion	56-38-2	2	.01	8270	20
Pentachlorobenzene	608-93-5	.3	4E -4	8121	3
Pentachloronitrobenzene (PCNB)	82-68-8	.001	.02	8270	.1
Pentachlorophenol	87-86-5	.01	.05	8270	.1
Phenol	108-95-2	200	.01	8270	2000
Phenylenediamine /8		.007	.01	8270	.7
Phorate	298-02-2	.07	4E -4	8141	.7
Phthalic anhydride	85-44-9	700	.1	8270 /9	7000
Polychlorinated biphenyls	1336-36-3	.005	7E -4	8080	.05
Pronamide	23950-58-5	30	.01	8270	300
Pyrene	129-00-0	10	.01	8270	100
Pyridine	110-86-1	.4	.005	8240	4
Safrole	94-59-7	.002	.01	8270	.2
Selenium (and compounds N.O.S.)	7782-49-2	.5	.02	7740	5
Silver (and compounds N.O.S.)	7440-22-4	2	.002	7761	20
Strychnine and salts	57-24-9	.1	.04	8270	1
Styrene	100-42-5	1	1E -4	8021	10
1,2,4,5-Tetrachlorobenzene	95-94-3	.1	1E -4	8121	1
1,1,1,2-Tetrachloroethane	630-20-6	.01	.005	8260	1
1,1,2,2-Tetrachloroethane	79-34-5	.002	5E-5	8021	.2
Tetrachloroethylene	127-18-4	.05	.005	8260	.5
2,3,4,6-Tetrachlorophenol	935-95-5	10	.01	8270	100
Tetraethyl dithiopyrophosophate	3689-24-5	.2	.01	8270	2
Thallium (and compounds N.O.S.)	7440-28-0	.02	.01	7841	.2
Toluene	108-88-3	10	.005	8260	100
2,4-Toluenediamine	95-80-7	1E -4	.02	8270	.01
2,6-Toluenediamine	823-40-5	70	.02	8270	700
o-Toluidine	95-53-4	.001	.01	8270	.1
p-Toluidine	106-49-0	.002	.01	8270	.2
Toxaphene	8001-35-2	.03	.002	8080	.3
Tribomomethane (Bromoform)	75-25-2	.04	.005	8260	4
1,2,4-Trichlorobenzene	120-82-1	.09	.01	8260	.9
1,1,1-Trichloroethane	71-55-6	2	.005	8260	20

APPENDIX XII—CBEC FOR WASTE—Continued

Common name[1]	Chemical Abstract No.[2]	Tier 1			Tier 2
		Exemption levels for leachate[3] (mg/L)	EQC for leachate[4] (mg/L)	Possible SW-846 method for leachate[5]	Exemption Levels for leachate[6] (mg/L)
1,1,2-Trichloroethane	79-00-5	.05	.005	8260	.5
Trichloroethylene	79-01-6	.05	.005	8260	.5
Trichlorofluoromethane	75-69-4	100	.005	8260	1000
2,4,5-Trichlorophenol	95-95-4	40	.01	8270	400
2,4,6-Trichlorophenol	88-06-2	.03	.01	8270	3
2,4,5-Trichlorophenoxyacetic acid	93-76-5	4	.002	8150	40
2,4,5-TP (Silvex)	93-72-1	.5	.002	8150	5
1,2,3-Trichloropropane	96-18-4	2	.005	8260	20
1,1,2-Trichloro-1,2,2-trifluoroethane	354-58-5	1E 4	.005	8260	1E 5
sym-Trinitrobenzene	99-35-4	.02	.01	8270	.2
Tris(2,3-dibromopropyl)phosphate	126-72-7	3E -5	.2	8270	.004
Vanadium	7440-62-2	2	.08	6010	20
Vinyl chloride (Chloroethene)	75-01-4	.02	2E -4	8021	.2
Xylenes	1330-20-7	100	.005	8260	1000
Zinc (and compounds N.O.S.)	7440-66-6	70	.02	6010	700

[1] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2] Chemical Abstracts Service registry number. Where "and compounds N.O.S." is entered, all species of the metal are included.

[3] Wastewater and SW-846 Method 1311 Leachate must be analyzed for all constituents on the exemption list. If any of the constituent concentrations exceed the CBEC concentrations, the waste fails the Tier 1 CBEC demonstration. The exemption concentrations are based on health-based numbers, a risk level of 10^{-6}, and Maximum Contaminant Levels and include a dilution attenuation factor (DAF) of 10.

[4] Exemption Quantification Criteria (EQC). when a specified exemption level is below its specified EQC, the exemption demonstration must achieve an actual detection limit which is at least as low as the specified EQC. In thes cases, if the demonstration shows that the constituent cannot be quantified above the CBEC, and the actual detection limit is equal to or below the EQC, the Agency will assume that the constituent is not present at levels of regulatory concern. If the actual detection limit exceeds the EQC for the specified constituent, the demonstration is considered invalid.

[5] Possible analytical methods refer to procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste", Third Edition, November 1986, as revised, December 1987, for the methods used. Methods listed are believed to be capable of routinely determining concentrations of the respective analytes at the EQC or below. Other methods are permissible if a laboratory can demonstrate it is capable of achieving the EQCs for given analytes, while still adhering to the quality control guidance given in Chapter One of SW-846. Operators must report the concentrations actually determined by the method chosen, even if they are below the EQC.

[6] Wastwater and SW-846 Method 1311 Leachate must be analyzed for all constituents on the exemption list. If any of the constituent concentrations exceed the CBEC concentrations, the waste fails the Tier 2 CBEC demonstration. The exemption concentrations are based on health-based numbers, a risk level of 10^{-5}, and Maximum Contaminant Levels and include a dilution attenuation factor (DAF) of 100.

[7] Benzotrichloride is hydrolytically unstable. Analyze for benzoic acid.

[8] CBEC concentrations are based on toxicity data for o-phenylendediamine. Method 8270 does not specify retention times for the three isomers, thus the lowest available toxicity data for the isomers is used as a worst-case scenario.

[9] Phthalic anhydride is hydrolytically unstable. Analyze for phthlic acid.

[10] Indicates constituent should be analyzed via direct injection.

Appendix XIII Sampling Requirements

1. Environmental media

(i) A sampling and analysis plan must be prepared that (1) describes the proposed exemption demonstration, (2) conforms to the description of such plans in chapter one of SW-846, (3) describes how sample representativeness will be determined, (4) discusses any modifications to the analytical protocols listed in appendix XI and (5) describes the facility's quality assurance program.

(ii) Representative samples of the contaminated media must be analyzed according to the analytical methods specified in appendix XI to this part and the facility's sampling and analysis plan prior to management of the media as non-hazardous to determine whether the media meets the concentration-based exemption criteria levels specified in appendix XI. Total constituent analyses of these samples must be conducted for each of the constituents in appendix XI. In addition, for media containing greater than 0.5% solids as measured in step 7.1.1 (Preliminary determination of percent solids) of method 1312 (the Synthetic Precipitation Leaching Procedure), the samples must be extracted using method 1312, and the resultant extract analyzed for each of the constituents in appendix XI. The demonstration must include enough representative composite samples taken over a period of time and area sufficient to represent the temporal and spatial variability or uniformity of the media:

(A) Contaminated Soils/Sediments: Samples must be collected in such a manner as to define the boundaries of contamination. When the area of contamination is less than 40,000 square feet, divide the unit into at least four sections of equal area. Collect five random or fixed transect full-core subsamples from each section. Composite subsamples from each section. When the area of contamination is greater than 40,000 square feet, divide the unit into equal sections of not more than 10,000 square feet. Collect five random or fixed transect full-core subsamples from each section. Composite subsamples from each section.

(B) Contaminated Ground Water from Pump and Treat Operations: Collect a minimum of four time-composite samples (each composite should consist of four to five grab samples) collected over a period of at least one month.

(C) Contaminated In-place Ground Water: Collect four rounds of samples from all ground-water monitoring wells in an EPA- or state-approved ground-water monitoring system that is designed to characterize the lateral and vertical extent and nature of the ground-water contamination over a period of one year.

(D) Additional samples should be collected as needed to ensure that the sample set is representative of any temporal or spatial compositional variations, and to support QA/QC analyses.

(iii) A sampling record must be maintained which includes:

(A) Name, address and RCRA ID number of facility;

(B) Names and qualifications of persons sampling the media;

(C) Date of sampling;

(D) Description of the unit or sampling area an explanation of why the samples are representative of the temporal and spatial variability of the media;

(E) Description of sampling techniques, containerization and preservation of samples, and chain of custody; and

(F) Discussion of process and treatment operating parameters at the time of sampling.

(iv) A testing record must be maintained which includes:

(A) Name and address of laboratory analyzing the media;

(B) Names and qualifications of analysts;

(C) Date of analysis;

(D) Description of sample preparation techniques used for extraction of samples;

(E) Description of analytical methods and QA/QC procedures; (F) Type and model number of instruments used in analytical procedures; and

(G) Analytical testing and QA/QC results.

(v) Sampling and analysis of media must be repeated annually for the first two years the

exemption is claimed and every three years thereafter, and when process or operating changes (including upsets) occur which could affect the medium's composition.

2. Waste

(i) A sampling and analysis plan must be prepared that (1) describes the proposed exemption demonstration, (2) conforms to the description of such plans in chapter one of SW–846, (3) describes how sample representativeness will be determined, (4) discusses any modifications to the analytical protocols listed in appendix 11, and (5) describes the facility's quality assurance program.

(ii) Representative samples of the waste must be analyzed according to the analytical methods specified in appendix 12 to this part and the facility's sampling and analysis plan prior to management of the waste as non-hazardous waste to determine whether the waste meets the concentration-based exemption criteria levels specified in appendix 12. The samples must be extracted using the Toxicity Characteristic Leaching Procedure, method 1311, and the resultant extract analyzed for each of the constituents in appendix 12. The demonstration must include enough representative composite samples taken over a period of time and area sufficient to represent the temporal and spatial variability or uniformity of the waste:

(A) Pipes and Other Process Discharges: Collect a minimum of four time-composite samples (each composite should consist of four to five grab samples) collected over a period of at least one month.

(B) Drums: Collect a minimum of four single core samples from drums filled over at least a one-month period.

(C) Land Disposal Units (less than 40,000 square feet): Divide the unit into at least four sections of equal area. Collect five random or fixed transect full-core subsamples from each section. Composite subsamples from each section.

(D) Land Disposal Units (greater than 40,000 square feet): Divide the unit into equal sections of not more than 10,000 square feet. Collect five random or fixed transect full-core subsamples from each section. Composite subsamples from each section.

(E) Additional samples should be collected as needed to ensure that the sample set is representative of any temporal or spatial compositional variations, and to support required QA/QC analyses.

(F) Sampling and analysis of wastes must be repeated annually for the first two years and every three years thereafter, and when process, operating or treatment changes (including upsets) occur which could affect the waste's composition.

(iii) A sampling record must be maintained which includes:

(A) Name, address, and RCRA ID number of facility;

(B) Names and qualifications of persons sampling the waste;

(C) Date of sampling;

(D) Description of the unit or sampling area and an explanation of why the samples are representative of the temporal and spatial variability of the waste;

(E) Description of sampling techniques, containerization and preservation of samples, and chain of custody; and

(F) Discussion of process and treatment operating parameters at the time of sampling.

(iv) A testing record must be maintained which includes:

(A) Name and address of laboratory analyzing the waste;

(B) Names and qualifications of analysts;

(C) Date of analysis;

(D) Description of sample preparation techniques used for extraction of samples;

(E) Description of analytical methods and QA/QC procedures;

(F) Type and model number of instruments used in analytical procedures; and

(G) Analytical testing and QA/QC results.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

9. In § 262.20, paragraph (b) is revised to read as follows:

§ 262.20 General requirements.

* * * * *

(b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest. In the case of wastes claiming an exemption under 40 CFR 261.4(b)(14) or media claiming an exemption under 40 CFR 261.4(a)(13), a generator must designate the facility identified in its exemption notification.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

10. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

11. Section 264.1 is amended by adding paragraph (g)(11) to read as follows:

§ 264.1 Purpose, scope and applicability.

(g) * * * *

(11) The owner or operator of a facility that accepts wastes claiming an exemption under 261.4(b)(14), so long as:

(A) The owner or operator only accepts for disposal manifested wastes claiming an exemption under 261.4(b)(14) exclusively or in addition to solid wastes;

(B) The owner or operator stores manifested waste claiming an exemption under 261.4(b)(14) in accordance with the requirements of 40 CFR 262.34(a)(1) no longer than 10 days prior to disposal; and

(C) The owner or operator disposes of the waste claiming an exemption under 261.4(b)(14) in a unit or units meeting the criteria of part 258, subpart D.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

12. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

13. Section 268.1 is amended by adding a new paragraph (c)(4) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(4) Where the waste is exempted from subtitle C regulation under § 261.4 (a)(11) or (b)(13).

* * * * *

[Option 2]

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. In 260.10, add the following definitions in alphabetical order:

§ 260.10 Definitions.

* * * * *

Dilution means the addition of materials, liquid or non-liquid, to increase the volume of a given waste or media to reduce constituent concentrations.

* * * * *

Media means any naturally-occurring soil or ground water.

* * * * *

Soil means unconsolidated earth material composing the superficial geologic strata (materials overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or is a mixture of such materials with other liquids, sludges, or solids, and is inseparable by simple mechanical removal processes.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

2. In § 261.3, paragraph (e) is removed, and paragraphs (a)(2)(iv)(F) and (c)(2)(ii)(C) are added to read as follows:

§ 261.13 Definition of hazardous waste.

(a) * * *

(2) * * *

(iv) * * *

(F) Waste that contains hazardous constituents all of which have regulatory levels established under table 1 of 40 CFR 261.24. Generators which have wastes regulated as listed hazardous wastes which may become designated as non-listed wastes pursuant to this subparagraph must test their wastes for all constituents listed in table 261.24 and provide EPA with a one-time notification prior to handling the waste as nonhazardous. The waste remains hazardous waste unless and until completion of testing and notification.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) Waste that contains hazardous constituents all of which have regulatory levels established under table 1 of 40 CFR 261.24. Generators which have wastes regulated as listed hazardous wastes which may become designated as non-listed wastes pursuant to this subparagraph must test their wastes for all constituents listed in table 261.24 and provide EPA with a one-time notification prior to handling the waste as nonhazardous. The waste remains hazardous waste unless and until completion of testing and notification.

* * * * *

3. In § 261.24, table 1 is revised to read as follows:

§ 261.24 Toxicity characteristic.

* * * * *

TABLE 1.—MAXIMUM CONCENTRATION OF CONTAMINANTS FOR THE TOXICITY CHARACTERISTICS

EPA HW No.[1]	Contaminant	Chemical abstract No.[2]	Regulatory levels (mg/L)
D044	Acenapthene	83-32-9	200
D045	Acetone (2-propanone)	67-64-1	400
D046	Acetonitrile (methyl cyanide)	75-05-8	20
D047	Acetophenone	98-86-2	400
D048	Acrolein	107-02-8	70
D049	Acrylamide	79-06-1	[7].10
D050	Acrylonitrile	107-13-1	.06
D051	Aldrin	309-00-2	.002
D052	Aniline (benzeneamine)	62-53-3	6
D053	Antimony (and compounds N.O.S.)	7440-36-0	1
D054	Aramite	140-57-8	1
D004	Arsenic (and compounds N.O.S.)	7440-38-2	5
D005	Barium (and compounds N.O.S.)	7440-39-3	200
D055	Benz[a] anthracene	6-55-3	.01
D018	Benzene	71-43-2	.5
D056	Benzidine	92-87-5	[7].03
D057	Benzo(b)fluoranthene	205-99-2	.02
D058	Benzo(a)pryren	50-32-8	.02
D059	Benzotrichloride[3]	98-07-7	.003
D060	Benzyl alcohol	100-51-6	1000
D061	Benzyl chloride	100-44-7	.2●
D062	Beryllium (and compounds N.O.S.)	7440-41-7	.1
D063	Bis(2-chloroethyl) ether	111-44-4	.03
D064	Bis(2-chloroisopropyl) ether	39638-32-9	.5
D065	Bis(2-ethylhexyl) phthalate	117-81-7	.4
D066	Bromodichloromethane	75-27-4	.3
D067	Bromomethane	74-83-9	5
D068	Butanol	71-36-3	400
D069	Butyl benzyl phthalate	85-68-7	10
D070	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	.7
D006	Cadmium (and compounds N.O.S.)	7440-43-9	.5
D071	Carbon disulfide	75-15-0	400
D019	Carbon tetrachloride	56-23-5	.5
D020	Chlordane	57-74-9	.2
D072	p-Chloroaniline	106-47-8	10
D021	Chlorobenzene	108-90-7	10
D073	Chlorobenzilate	510-15-6	70
D074	2-Chloro-1,3-butadiene (chloroprene)	126-99-8	70
D075	Chlorodibromomethane	124-48-1	.4
D022	Chloroform	67-66-3	6
D076	Chloromethane (Methyl Chloride)	74-87-3	3
D077	2-Chlorophenol	95-57-8	20
D078	3-Chloropropene (allyl chloride)	107-05-1	2
D007	Chromium (and compounds N.O.S.)	7440-47-3	10
D079	Chrysene	218-01-9	.02
D026	Cresol	1319-77-3	[6] 200
D023	o-Cresol	95-48-7	[6] 200
D024	m-Cresol	108-39-4	[6] 200
D025	p-Cresol	106-44-5	[6] 200
D080	Cumene	98-82-8	100
D081	Cyanide (amenable)	57-12-5	20
D016	2,4-Dichlorophenoxyacetic acid (2,4,-D)	94-75-7	7
D082	DDD	72-54-8	.1
D083	DDE	72-55-9	.1
D084	DDT	50-29-3	.1
D085	Diallate	2303-16-4	.6
D086	Dibenz(a,h)anthracene	53-70-3	.03
D087	1,2-Dibromo-3-chloropropane	96-12-8	.02

TABLE 1.—MAXIMUM CONCENTRATION OF CONTAMINANTS FOR THE TOXICITY CHARACTERISTICS—Continued

EPA HW No.[1]	Contaminant	Chemical abstract No.[2]	Regulatory levels (mg/L)
D088	Dibromomethane (methylene bromide)	74-95-3	40
D089	1,2-Dichlorobenzene	95-50-1	60
D027	1,4-Dichlorobenzene	106-46-7	7.5
D090	3,3'-Dichlorobenzidine	91-94-1	.08
D091	Dichlorodifluoromethane	75-71-8	700
D092	1,1-Dichloroethane	75-34-3	400
D028	1,2-Dichloroethane	107-06-2	.5
D029	1,1-Dichloroethylene	75-35-4	.7
D093	cis-1,2-Dichloroethylene	156-60-5	7
D094	trans-1,2-Dichloroethylene	156-60-5	10
D095	Dichloromethane (Methylene Chloride)	75-09-2	.5
D096	2,4-Dichlorophenol	120-83-2	10
D097	1,2-Dichloropropane	78-87-5	.5
D098	1,3-Dichloropropene	542-75-6	.2
D099	Dieldrin	60-57-1	.002
D100	Diethyl phthalate	84-66-2	3000
D101	Diethylstilbestrol	56-53-1	[7].02
D102	Dimethoate	60-51-5	.7
D103	3,3'-Dimethoxybenzidine	119-90-4	3
D104	7,12-Dimethylbenz(a)anthracene	57-97-6	[7].01
D105	3,3'-Dimethylbenzidine	119-93-7	[7].01
D106	2,4-Dimethylphenol	105-67-9	70
D107	Dimethyl phthalate	131-11-3	4000
D108	1,3-Dinitrobenzene	25154-54-5	.4
D109	2,4-Dinitrophenol	51-28-5	7
D030	2,4-Dinitrotoluene	121-14-2	.05
D110	2,6-Dinitrotoluene	606-20-2	.05
D111	Di-n-butyl phthalate	84-74-2	400
D112	Di-n-octyl phthalate	117-84-0	70
D113	1,4-Dioxane	123-91-1	3
D114	2378 TCDDioxin	1746-01-6	5E-6
D115	2378 PeCDDioxins		4E-7
D116	2378 HxCDDioxins		2E-6
D117	2378 HpCDDioxins		2E-5
D118	OCDD	3268-87-9	2E-4
D119	Diphenylamine	122-39-4	90
D120	1,2-Diphenylhydrazine	122-66-7	.04
D121	Disulfoton	298-04-4	.1
D122	Endosulfan	115-29-7	.2
D012	Endrin	72-20-8	.2
D123	Epichlorohydrin	106-89-8	4
D124	2-Ethoxyethanol	110-80-5	1000
D125	Ethyl acetate	141-78-6	3000
D126	Ethylbenzene	100-41-4	70
D127	Ethyl ether	60-29-7	700
D128	Ethyl methacrylate	97-63-2	300
D129	Ethyl methanesulfonate	62-50-0	[7].02
D130	Ethylene dibromide	106-93-4	.005
D131	Famphur	52-85-7	.1
D132	Fluoranthene	206-44-0	100
D133	Fluorene	86-73-7	100
D134	Formic acid	64-18-6	7000
D135	Furan	110-00-9	4
D136	2378 TCDFuran	51207-31-9	2E-6
D137	12378 PeCDFuran		4E-6
D138	23478 PeCDFuran	57117-31-4	4E-7
D139	2378 HxCDFurans		2E-6
D140	2378 HpCDFurans		2E-5
D141	OCDF		2E-4
D031	Heptachlor	76-44-8	0.04
D142	Heptachlor epoxide	1024-57-3	.02
D032	Hexachlorobenzene	118-74-1	.1
D033	Hexachloro-1,3-butadiene	87-68-3	.4
D143	alpha-HCH	319-84-6	.006
D144	beta-HCH	319-85-7	.02
D145	Hexachlorocyclopentadiene	77-47-4	5
D034	Hexachloroethane	67-72-1	3
D146	Hexachlorophene	70-30-4	1
D147	Indeno(1,2,3-cd)pyrene	193-39-5	.04
D148	Isobutyl alcohol	78-83-1	1000
D149	Isophorone	78-59-1	9
D150	Kepone	143-50-0	[7].02
D008	Lead (and compounds N.O.S.)	7439-92-1	1.5
D013	Lindane (gamma-HCH)	58-89-9	.02
D009	Mercury (and compounds N.O.S.)	7439-97-6	.2
D151	Methacrylonitrile	126-98-7	.4
D152	Methanol	67-56-1	2000
D014	Methoxychlor	72-43-5	4
D153	3-Methylcholanthrene	56-49-5	[7].01

TABLE 1.—MAXIMUM CONCENTRATION OF CONTAMINANTS FOR THE TOXICITY CHARACTERISTICS—Continued

EPA HW No.[1]	Contaminant	Chemical abstract No.[2]	Regulatory levels (mg/L)
D035	Methyl ethyl ketone	78-93-3	200
D154	Methyl isobutyl ketone	108-10-1	200
D155	Methyl methacrylate	80-62-6	300
D156	Methyl parathion	298-00-0	.9
D157	Naphthalene	91-20-3	100
D158	2-Naphthylamine	91-59-8	.04
D159	Nickel (and compounds N.O.S.)	7440-02-0	10
D036	Nitrobenzene	98-95-3	2
D160	2-Nitropropane	79-46-9	[7].10
D161	N/Nitroso-di-n-butylamine	924-16-3	[7].01
D162	N-Nitroso-diethylamine	55-18-5	[7].02
D163	N-Nitrosodimethylamine	62-75-9	[7].01
D164	N-Nitrosodiphenylamine	86-30-6	7
D165	N-Nitrosodi-n-propylamine	621-64-7	[7].01
D166	N/Nitrosomethylethylamine	10595-95-6	[7].01
D167	N-Nitrosopiperidine	100-75-4	[7].02
D168	N-Nitrosopyrrolidine	930-55-2	[7].04
D169	Octamethyl pyrophosphoramide	152-16-9	7
D170	Parathion	56-38-2	20
D171	Pentachlorobenzene	608-93-5	3
D172	Pentachloronitrobenzene (PCNB)	82-68-8	.1
D037	Pentachlorophenol	87-86-5	.1
D173	Phenol	108-95-2	2000
D174	Phenylenediamine [4]		.7
D175	Phorate	298-02-2	.7
D176	Phthalic anhydride [5]	85-44-9	7000
D177	Polychlorinated biphenyls	1336-36-3	.05
D178	Pronamide	23950-58-5	300
D179	Pyrene	129-00-0	100
D038	Pyridine	110-86-1	4
D180	Safrole	94-59-7	.2
D010	Selenium (and compounds N.O.S.)	7782-49-2	5
D011	Silver (and compounds N.O.S.)	7440-22-4	20
D181	Strychnine and salts	57-24-9	1
D182	Styrene	100-42-5	10
D183	1,2,4,5-Tetrachlorobenzene	95-94-3	1
D184	1,1,1,2-Tetrachloroethane	630-20-6	1
D185	1,1,2,2-Tetrachloroethane	79-34-5	.2
D039	Tetrachloroethylene	127-18-4	.5
D186	2,3,4,6-Tetrachlorophenol	935-95-5	100
D187	Tetraethyl dithiopyrophosphate	3689-24-5	2
D188	Thallium (and compounds N.O.S.)	7440-28-0	.2
D189	Toluene	108-88-3	100
D190	2,4-Toluenediamine	95-80-7	[7].02
D191	2,6-Toluenediamine	823-40-5	700
D192	o-Toluidine	95-53-4	.1
D193	p-Toluidine	106-49-0	.2
D015	Toxaphene	8001-35-2	.3
D194	Tribromomethane (Bromoform)	75-25-2	4
D195	1,2,4-Trichlorobenzene	120-82-1	.9
D196	1,1,1-Trichloroethane	71-55-6	20
D197	1,1,2-Trichloroethane	79-00-5	.5
D040	Trichloroethylene	79-01-6	.5
D198	Trichlorofluoromethane	75-69-4	1000
D041	2,4,5-Trichlorophenol	95-95-4	400
D042	2,4,6-Trichlorophenol	88-06-2	3
D199	2,4,5-Trichlorophenoxyacetic acid	93-76-5	40
D017	2,4,5-TP (Silvex)	93-72-1	5
D200	1,2,3-Trichloropropane	96-18-4	20
D201	1,1,2-Trichloro-1,2,2,-trifluoroethane	354-58-5	1E 5
D202	sym-Trinitrobenzene	99-35-4	.2
D203	Tris(2,3-dibromopropyl)phosphate	126-72-7	[7].20
D204	Vanadium	7440-62-2	20
D043	Vinyl chloride (Chloroethene)	75-01-4	.2
D205	Xylenes	1330-20-7	1000
D206	Zinc (and compounds N.O.S.)	7440-66-6	700

[1] Hazardous Waste Number
[2] Chemical Abstracts Service registry number. Where "and compounds N.O.S." is entered, all species of the metal are included.
[3] Benzotrichloride is hydrolytically unstable. Analyze for benzoic acid.
[4] CBEC concentrations are based on toxicity data for o-phenylenediamine. Method 8270 does not specify retention times for the three isomers, thus the lowest available toxicity data for the isomers is used as a worst-case scenario.
[5] Phthalic anhydride is hydrolytically unstable. Analyze for phthalic acid.
[6] If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.
[7] Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.

[Appendix VIII Amended]

4.–6. In appendix VIII of part 261, add the following hazardous constituents in alphabetical order:

APPENDIX VIII—HAZARDOUS CONSTITUENTS

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Acenaphthene	Acenaphthylene, 1,2-dihydro	83-32-9	
Acetaldehyde		75-07-0	U001
Acetone	2-Propanone	67-64-1	U002
Acrylic acid		79-10-7	U008
Benzo(k) fluoranthene	Same	201-08-9	
Benzyl alcohol	Benzenemethanol	100-51-6	
n-Butyl alcohol		71-36-3	U031
Chlorodibromo-methane; Dibromo-chloromethane	Methane, dibromochloro-	124-48-1	
Cumene		98-82-8	U055
Cyclohexanone		108-94-1	U057
Di-n-butyl phthalate	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	U069
Dimethylamine		124-40-3	U092
1,4-Dioxane	Same	123-91-1	U108
Ethyl acetate		141-78-6	U112
Ethylbenzene	Benzene, ethyl-	100-41-4	
Ethyl ether		60-29-7	U117
Furan		110-00-9	U124
Isophorone	2-Cyclohexen-1-one, 3,5,5-trimethyl	78-59-1	
Methanol		67-56-1	U154
Methyl isobutyl ketone		108-10-1	U161
Phenanthrene	Same	85-01-8	
Styrene	Benzene, ethenyl	100-42-5	
Vanadium	Same	Total	
Xylene	Benzene, dimethyl	1330-20-7	U239
Zinc	Same	Total	

7. At the end of part 261, appendix XI is added to read as follows:

Appendix XI—Sampling Requirements

1. Environmental Media

(i) A sampling and analysis plan must be prepared that (1) describes the proposed exemption demonstration, (2) conforms to the description of such plans in Chapter One of SW-846, (3) describes how sample representativeness will be determined, and (4) describes the facility's quality assurance program.

(ii) Representative samples of the contaminated media must be analyzed according to the analytical methods specified in appendix XI to this part and the facility's sampling and analysis plan prior to management of the media as non-hazardous to determine whether the media meets the concentration-based exemption criteria levels specified in Appendix XI. Total constituent analyses of these samples must be conducted for each of the constituents in appendix XI. In addition, for media containing greater than 0.5% solids as measured in step 7.1.1 (Preliminary determination of percent solids) of method 1312 (the Synthetic Precipitation Leaching Procedure), the samples must be extracted using method 1312, and the resultant extract analyzed for each of the constituents in appendix XI. The demonstration must include enough representative composite samples taken over a period of time and area sufficient to represent the temporal and spatial variability or uniformity of the media:

(A) Contaminated Soils/Sediments: Samples must be collected in such a manner as to define the boundaries of contamination. When the area of contamination is less than 40,000 square feet, divide the unit into at least four sections of equal area. Collect five random or fixed transect full-core subsamples from each section. Composite subsamples from each section. When the area of contamination is greater than 40,000 square feet, divide the unit into equal sections of not more than 10,000 square feet. Collect five random or fixed transect full-core subsamples from each section. Composite subsamples from each section.

(B) Contaminated Ground Water From Pump and Treatment Operations: Collect a minimum of four time-composite samples (each composite should consist of four to five grab samples) collected over a period of at least one month.

(C) Contaminated In-Place Ground Water: Collect four rounds of samples from all ground water monitoring wells in an EPA- or state-approved ground water monitoring system that is designed to characterize the lateral and vertical extent and nature of the ground water contamination over a period of one year.

(D) Additional samples should be collected as needed to ensure that the sample set is representative of any temporal or spatial compositional variations, and to support required QA/QC analyses.

(iii) A sampling record must be maintained which includes:

(A) Name, address and RCRA ID number of facility;

(B) Names and qualifications of persons sampling the media;

(C) Date of sampling;

(D) Description of the unit or sampling area and an explanation of why the samples are representative of the temporal and spatial variability of the media;

(E) Description of sampling techniques, containerization and preservation of samples, and chain of custody; and

(F) Discussion of process and treatment operating parameters at the time of sampling.

(iv) A testing record must be maintained which includes:

(A) Name and address of laboratory analyzing the media;

(B) Names and qualifications of analysts;

(C) Date of analysis;

(D) Description of sample preparation techniques used for extraction of samples;

(E) Description of analytical methods and QA/QC procedures;

(F) Type and model number of instruments used in analytical procedures; and

(G) Analytical testing and QA/QC results.

(v) Sampling and analysis of media must be repeated annually for the first two years the exemption is claimed and every three years thereafter, and when process or operating changes (including upsets) occur which could affect the medium's composition.

2. Waste

(i) A sampling and analysis plan must be prepared that (1) describes the proposed exemption demonstration, (2) conforms to the description of such plans in chapter one of SW–846, (3) describes how sample representativeness will be determined, (4) discusses any modifications to the analytical protocols listed in appendix XI, and (5) describes the facility's quality assurance program.

(ii) Representative samples of the waste must be analyzed according to the analytical methods specified in appendix XII to this part and the facility's sampling and analysis plan prior to management of the waste as non-hazardous waste to determine whether the waste meets the concentration-based exemption criteria levels specified in appendix XII. The samples must be extracted using the Toxicity Characteristic Leaching Procedure, method 1311, and the resultant extract analyzed for each of the constituents in appendix XII. The demonstration must include enough representative composite samples taken over a period of time and area sufficient to represent the temporal and spatial variability or uniformity of the waste:

(A) Pipes and Other Process Discharges: Collect a minimum of four time-composite samples (each composite should consist of four to five grab samples) collected over a period of at least one month.

(B) Drums: Collect a minimum of four single-core samples from drums filled over at least a one-month period.

(C) Land Disposal Units (less than 40,000 square feet): Divide the unit into at least four sections of equal area. Collect five random or fixed transect full-core subsamples from each section. Composite subsamples from each section.

(D) Land Disposal Units (greater than 40,000 square feet): Divide the unit into equal sections of not more than 10,000 square feet. Collect five random or fixed transect full-core subsamples from each section. Composite subsamples from each section.

(E) Additional samples should be collected as needed to ensure that the sample set is representative of any temporal or spatial compositional variations, and to support required QA/QC analyses.

(F) Sampling and analysis of wastes must be reported annually for the first two years and every three years thereafter, and when process, operating or treatment changes (including upsets) occur which could affect the waste's composition.

(iii) A sampling record must be maintained which includes:

(A) Name, address, and RCRA ID number of facility;

(B) Names and qualifications of persons sampling the waste;

(C) Date of sampling;

(D) Description of the unit or sampling area and an explanation of why the samples are representative of the temporal and spatial variability of the waste;

(E) Description of sampling techniques, containerization and preservation of samples, and chain of custody; and

(F) Discussion of process and treatment operating parameters at the time of sampling.

(iv) A testing record must be maintained which includes:

(A) Name and address of laboratory analyzing the waste;

(B) Names and qualifications of analysts;

(C) Date of analysis;

(D) Description of sample preparation techniques used for extraction of samples;

(E) Description of analytical methods and QA/QC procedures;

(F) Type and model number of instruments used in analytical procedures; and

(G) Analytical testing and QA/QC results.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

9. In 262.20, paragraph (b) is revised to read as follows:

§ 262.20 General requirements.

* * * * *

(b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest. In the case of wastes claiming an exemption under 40 CFR 261.4(b)(14) or media claiming an exemption under 40 CFR 261.4(a)(13), a generator must designate the facility identified in its exemption notification.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

10. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

11. Section 264.1 is amended by adding paragraph (g)(11) to read as follows:

§ 264.1 Purpose, scope and applicability.

(g) * * *

(11) the owner or operator of a facility that accepts wastes claiming an exemption under § 261.4(b)(14), so long as:

(A) the owner or operator only accepts for disposal mainfested wastes claiming an exemption under § 261.4(b)(14) exclusively or in addition to solid wastes;

(B) the owner or operator stores manifested waste claiming an exemption under §261.4(b)(14) in accordance with the requirements of 40 CFR 262.34(a)(1) no longer than 10 days prior to disposal; and

(C) the owner or operator disposes of the waste claiming an exemption under §261.4(b)(14) in a unit or units meeting the criteria of part 258, subpart D.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

12. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6924.

13. Section 268.1 is amended by adding paragraph (c)(4) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(4) Where the waste is exempted from subtitle C regulation under § 261.3(a)(2)(iv)(F) or § 261.3(c)(2)(ii)(C).

* * * * *

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May 20, 1992

Part III

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-530-Z-92-006; 4118-4]

Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today promulgating a final listing decision for used oils based upon the technical criteria provided in the Resource Conservation and Recovery Act (RCRA) sections 1004 and 3001 and in 40 CFR 261.11 (a)(1) and (a)(3). EPA has decided not to list used oils destined for disposal as hazardous waste based on the finding that all used oils do not typically and frequently meet the technical criteria for listing a waste as hazardous waste. This rule, therefore, preserves the status quo for used oil destined for disposal. EPA today is promulgating a modification to the current exclusions from the definition of hazardous waste in 40 CFR 261.4 to provide an exemption for certain types of used oil filters. The Agency today is also providing public notice of the EPA's deferral on a decision whether or not to list residuals from the reprocessing and re-refining of used oil at this time.

The Agency is not taking final action, at this time, on a listing determination and/or management standards for used oils that are recycled as proposed in 1985 and 1991. The Agency will, in the near future, make a final decision on listing of used oil destined for recycling and appropriate management standards for used oil handlers under the authority of RCRA section 3014. If EPA promulgates additional management standards, service station dealers may be eligible to qualify for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 114(c) liability exemption. The Agency also may propose standards controlling the burning of used oil in boilers and furnaces at a later date.

EFFECTIVE DATE: June 19, 1992.

ADDRESSES: The docket for this rulemaking and regulatory decision is available for public inspection at room 2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The docket number is F-91-UOLF-FFFFF. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Telephone (800) 424-9346 (toll free) or, in the Washington, DC, metropolitan area telephone (703) 920-9810.

For information on specific aspects of this rulemaking and regulatory decision, contact Ms. Rajni D. Joglekar (202) 260-3516 or Ms. Eydie Pines (202) 260-3509, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of today's notice are listed in the following outline:

I. Authority

This regulatory decision is issued under authority of sections 1004, 1006, 2002, 3001 and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments, and as amended by the Used Oil Recycling Act, 42 U.S.C. 6901 *et. seq.*

II. Background

A. Regulation as a Hazardous Waste

On December 18, 1978, EPA initially proposed guidelines and regulations for the management of hazardous wastes as well as specific rules for the identification and listing of hazardous wastes under section 3001 of the Resource Conservation and Recovery Act (RCRA) (43 FR 58946). At that time, EPA proposed to list waste lubricating oil and waste hydraulic and cutting oil [1] as hazardous wastes on the basis of their toxicity. In addition, the Agency proposed recycling regulations to regulate (1) the incineration or burning of used lubricating, hydraulic, transformer, transmission, or cutting oil that was hazardous and (2) the use of waste oils in a manner that constituted disposal.[2]

In the May 19, 1980, regulations (45 FR 33084), EPA decided to defer promulgation of the recycling regulations for waste oils in order to consider fully whether waste- and use-specific standards may be implemented in lieu of imposing the full set of Subtitle C regulations on potentially recoverable and valuable materials. At the same time, EPA deferred the listing of waste oil that is destined for disposal so that the entire waste oil issue could be addressed at one time. Under the May 19, 1980, regulations, however, any

[1] The term "waste oil" includes both used and unused oils that may no longer be used for their original purpose.

[2] "Use in a manner constituting disposal" means the placement of hazardous waste directly onto the land in a manner constituting disposal or the use of the solid waste to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land now codified at 40 CFR 261.2(c)(1).

waste oil exhibiting one of the characteristics of hazardous waste (ignitability, corrosivity, reactivity, and toxicity) that was disposed, or accumulated, stored, or treated prior to disposal, became regulated as a hazardous waste subject to all applicable Subtitle C regulations.

B. Used Oil Recycling Act (UORA)

In an effort to encourage the recycling of used oil, and in recognition of the potential hazards posed by its mismanagement, Congress passed the Used Oil Recycling Act (UORA) on October 15, 1980 (Pub. L. 96-463). UORA defined used oil as "any oil which has been refined from crude oil, used, and as a result of such use, contaminated by physical or chemical impurities." Among other provisions, UORA required the Agency to make a determination as to the hazardousness of used oil and report the findings to Congress with a detailed statement of the data and other information upon which the determination was based. In addition, the Agency was to establish performance standards and other requirements under section 7 of UORA as "may be necessary to protect the public health and the environment from hazards associated with recycled oil" as long as such regulations "do not discourage the recovery or recycling of used oil." These statutory provisions originally were added as section 3012 of RCRA by the UORA and subsequently were amended and redesignated as section 3014 of RCRA under the Hazardous and Solid Waste Amendments of 1984.

In January 1981, EPA submitted to Congress the used oil report mandated by section 8 of the UORA.[3] In the report, EPA indicated its intention to list both used oil and unused waste oil as hazardous under section 3001 of RCRA based on the presence of a number of toxicants in crude or refined oil (*e.g.*, benzene, naphthalene, and phenols), as well as the presence of contaminants in used oil as a result of use (*e.g.*, lead, chromium, and cadmium). In addition, the report cited the environmental and human health threats posed by these used oils and unused waste oils, including the potential threat of rendering ground water non-potable through contamination.

C. Hazardous and Solid Waste Amendments (HSWA)

On November 8, 1984, the Hazardous and Solid Waste Amendments (HSWA) to RCRA were signed into law. In addition to many other requirements, HSWA reemphasized that the protection of human health and the environment was to be of primary concern in the regulation of hazardous waste. Specific to used oil, the Administrator was required to "promulgate regulation * * * as may be necessary to protect human health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil *consistent with the protection of human health and the environment.*" (Emphasis added to highlight HSWA language amending RCRA § 3014(a) (see section 242, Pub. L. 98-616).)

HSWA required EPA to propose whether to identify or list used automobile and truck crankcase oil by November 8, 1985, and to make a final determination as to whether to identify or list any or all used oils by November 8, 1986. On November 29, 1985 (50 FR 49258), EPA proposed to list all used oils as hazardous waste, including petroleum-derived and synthetic oils, based on the presence of toxic constituents at levels of concern during and after use. Also on November 29, 1985, the Agency proposed management standards for recycled used oil (50 FR 49212) and issued final regulations, incorporated at 40 CFR part 266, subpart E, prohibiting the burning of off-specification used oil fuels [4] in non-industrial boilers and furnaces (50 FR 49164). Marketers of used oil fuel and industrial burners of off-specification fuel are required to notify EPA of their activities and to comply with certain administrative requirements. Used oils that meet the used oil fuel specification are exempt from most of the 40 CFR part 266, subpart E regulations.

On March 10, 1986 (51 FR 8206), the Agency published a supplemental notice requesting comments on additional aspects of the proposed listing of used oil as hazardous. In particular, commenters to the November 29, 1985, proposal suggested that EPA consider a regulatory option of only listing used oil as a hazardous waste when disposed, while promulgating special management standards for used oil that is recycled. The supplemental notice also contained a request for comments on additional issues related to the "mixture rule" (40 CFR 261.3(a)(2)(iv)), on test methods for determining halogen levels in used oils, and on new data on the composition of used oil and used oil processing residuals.

D. November 19, 1986, Decision Not To List Recycled Used Oil

On November 19, 1986, EPA issued a decision not to list as a hazardous waste used oil that is recycled (51 FR 41900). At that time, it was the Agency's belief that the stigmatic effects associated with a hazardous waste listing might discourage the recycling of used oil, thereby resulting in increased disposal of used oil in uncontrolled manners. EPA stated that several residues, wastewaters, and sludges associated with the recycling of used oil may be evaluated to determine if a hazardous waste listing for these residuals was necessary, even if used oil was not listed as a hazardous waste. EPA also outlined a plan that included making a determination of whether or not to list, as a hazardous waste, used oil that is disposed and promulgation of special management standards for recycled oil.

EPA's decision not to list used oil as a hazardous waste based on the potential stigmatic effects was challenged by the Hazardous Waste Treatment Council, the Association of Petroleum Re-refiners, and the Natural Resources Defense Council. The petitioners claimed that (1) the language of RCRA indicated that in determining whether to list used oil as a hazardous waste, EPA may consider technical characteristics of hazardous waste, but not the "stigma" that a hazardous listing might involve, and (2) that Congress intended EPA to consider the effects of listing on the recycled oil industry only after the initial listing decision.

On October 7, 1988, the Court of Appeals for the District of Columbia found that EPA acted contrary to law in its determination not to list used oil under RCRA § 3001 based on the stigmatic effects. (See *Hazardous Waste Treatment Council v. EPA*, 861 F.2d 270 (D.C. Cir. 1988) [HWTC I].) The court ruled that EPA must determine whether to list any used oils based on the technical criteria for waste listings specified in the statute and in EPA's implementing regulations.

E. Recent Agency Activities

After the 1988 court decision, EPA began to reevaluate its basis for making a listing determination for used oil. EPA reviewed the statute, the 1985 proposed

[3] Report to Congress: Listing of Waste Oil as a Hazardous Waste Pursuant to section (8)(2), Pub. L. 96-463; U.S. EPA, 1991.

[4] Used Oil that exceeds any of the following specification levels is considered to be "off-specification" used oil fuel under 40 CFR 266.40(e): Arsenic—5 ppm, Cadmium—2 ppm, Chromium—10 ppm, Lead—100 ppm, Flash Point—-100 °F minimum, Total Halogens—4,000 ppm.

rule, and the many comments received on the proposed rule. Those comments indicated numerous concerns with the proposed listing approach. One of the most frequent concerns voiced by commenters was related to the quality and "representativeness" of the data used by EPA to characterize used oils in 1985. Numerous commenters indicated that "their oils" were not represented by the data and, if they were represented, those oils were characterized after being mixed with other more contaminated oils or with other hazardous wastes. Many commenters submitted data demonstrating that the used oils they generate, particularly industrial used oils, did not contain high levels of toxicants of concern.

In addition, the Agency recognized that much of the information in the 1985 used oil composition data is several years old, as most of the information was collected prior to 1985. Since the time of that data gathering effort, the composition of used automotive oil may have been affected by the phase-down of lead in gasoline. The Agency also recognized the need to collect analytical data addressing specific classes of used oils as collected and stored at the point of generation (*i.e.*, at the generator's facility).

Finally, the toxicity characteristic extraction procedure (EP) (45 FR 33119, May 19, 1980) identified certain used oils as hazardous. Due to the possibility of changes in used oil composition described above and promulgation of the new toxicity characteristic (TC) rule (55 FR 11798, March 29, 1990), the Agency recognized that additional data to characterize the toxicity of used oil was needed prior to making a final hazardous waste listing determination.

F. September 1991 Supplemental Notice

On September 23, 1991, EPA published a Supplemental Notice of Proposed Rulemaking (56 FR 48000). The 1991 Supplemental Notice presented supplemental information gathered by EPA and provided to EPA by individuals commenting on previous notices on the listing of used oil and used oil management standards. As discussed above, numerous commenters on the 1985 proposal to list used oil as a hazardous waste contended that the broad listing of all used oils would unfairly subject them to stringent regulation because their used oils are not hazardous. Based on those comments, the Agency has collected a variety of additional information regarding various types of used oil, the management of these used oils, and the potential health and environmental effects posed when these used oils are mismanaged. The 1991 Supplemental Notice presented this new information to the public and requested comment on the information, particularly on the issue of whether and how the information suggests new concerns that EPA should consider in deciding whether to finalize all or part of its 1985 proposal to list used oil as a hazardous waste.

In addition, the 1991 Supplemental Notice expanded upon the November 29, 1985, proposal (50 FR 49258) to list used oils as hazardous and a March 10, 1986, Supplemental Notice (51 FR 8206) by discussing regulatory alternatives not previously presented in the **Federal Register**. Based on the public comments received relative to these two notices, the Agency investigated several important aspects of used oil regulation. For these aspects, the Agency identified alternative approaches that were not presented explicitly in the earlier notices. Those alternatives were presented in the 1991 Supplemental Notice.

The 1991 Supplemental Notice also discussed the Agency's proposal to amend 40 CFR 261.32 by adding four waste streams from the processing and re-refining of used oil to the list of hazardous wastes from specific sources. The Agency noted its intention to include these residuals in the definition of used oil in its November 29, 1985, proposal to list used oil as hazardous. The wastes from the processing and re-refining of used oil, which are more fully described later, include process residuals from the gravitational or mechanical separation of solids, water, and oil; spent polishing media used to finish used oil; distillation bottoms; and treatment residues from primary wastewater treatment.

The 1991 Supplemental Notice also included a description of several approaches the Agency was considering for the used oil management standards (in addition to, or in place of, those proposed in 1985).

G. Development of Comprehensive Market-Based Used Oil Recylcling Program

In developing management standards, EPA's efforts will be focused on avoiding any damage to existing recycling markets for used oil consistent with protection of human health and the environment. At the same time, however, the Agency is interested in obtaining the optimal level of used oil recycling. In the Agency's 1991 Supplemental Notice, EPA identified several innovative market-based approaches that it was considering in the process of developing a used oil management program that would be based on a melding of its authorities under RCRA and the Toxic Substances Control Act (TSCA).

EPA has devoted considerable resources toward the development of alternative market-based management programs. The Agency's preliminary examination indicates that there are important linkages between possible section 3014 management standards and the design of alternative incentive systems. In general, management standards that impose significant costs on used oil handlers may hamper the effectiveness of market-based programs because they discourage recycling and create unintended opportunities for fraud. Furthermore, management standards that are compatible with a particular market-based program (or no program at all) may be incompatible with other plausible alternative programs. The Agency believes that the success of any market-based program could be significantly affected by the design of incentive-compatible management standards.

Accordingly, when EPA issues its rulemaking on recycled used oil, it will address the issue of market based approaches. In doing so, the Agency will consider how market-based approaches to used oil recycling can complement management standards, promote environmentally responsive behavior and minimize compliance costs.

III. Summary of Comments Relating to Final Rule

A. Listing Used Oil: Summary of Major 1985 & 1991 Comments–

Many comments were received on the various aspects of the proposed listing of used oil. Most commenters opposed the listing of used oil as a hazardous waste. The reasons given included that EPA's sampling was unrepresentative and flawed, that used oil is no more hazardous than virgin oil, and the belief that the levels of constituents EPA found in used oils do not present a threat to human health. A large number of commenters challenged the scope of the listing and provided a number of examples where certain used oils should not be included in the listing because they do not contain the hazardous constituents of concern at concentrations exceeding health-based levels that would cause the used oil to be listed.

On November 29, 1985 (50 FR 49239), EPA proposed to list all used oils as hazardous waste, including petroleum-derived and synthetic oils, based on the presence of toxic constituents at levels of concern as a result of use or

adulteration after use. A sampling and analysis effort was undertaken by EPA in 1989 and 1990 to characterize specific categories of used oil to determine whether these used oils were hazardous at the point of generation. EPA's study was undertaken to address comments received in response to the November 1985 proposal to list all used oils wherein commenters claimed that certain types of used oil were not hazardous at the point of generation but rather were adulterated subsequent to use.

A number of commenters responded that "their" oil (such as electrical insulating or metalworking oil) did not contain toxic constituents of concerns, as demonstrated by EPA's own data, and therefore, should not be listed as hazardous waste. Other commenters stated that used oil containing toxic constituents would be adequately regulated by the existing characteristics framework, such as the TC. These commenters believed that used oil exhibiting the TC and destined for disposal would be regulated as hazardous waste, while used oil not exhibiting the TC should not be regulated under any circumstances.

Some commenters proposed that only those used oils that contain certain toxic constituents, such as lead, arsenic, cadmium, chromium, 1,1,1-trichloroethane, tricholorethylene, tetrachloroethylene, toluene, and naphthalene, should be included in the listing. One commenter indicated that storage tank data rather than point of generation data should be used to make a listing determination since most of the used oil management occurs after storage. Some commenters asserted that EPA's concern is not with used oil itself but the mixing of used oil with other constituents that may render the used oil hazardous only because of post-use adulteration. Therefore, instead of listing all used oils, commenters recommended that EPA should list used oils as hazardous only if other substances have been added after the oil's initial use.

The Supplemental Notice of September 23, 1991 (56 FR 448041), presented three options for identifying used oil as a hazardous waste. Option One was to list all used oils as proposed on November 29, 1985 (50 FR 49239). Option Two was to list categories of used oil that were found to be "typically and frequently" hazardous because of the presence of lead, polyaromatic hydrocarbons (PAHs), arsenic, cadmium, chromium, and benzene. Option Three was to not list used oils as hazardous, but rely on management standards developed under RCRA § 3014 to control mismanagement of used oil. The commenters overwhelmingly supported Option Three, not to list used oil as a hazardous waste, but rely on management standards.

A few commenters stated that as a result of EPA's program to phase down lead in gasoline, lead concentations in used oil have declined. In addition, some commenters claimed that EPA's analyses of used oil were based on too few samples and that these samples were unrepresentative of actual conditions. Some commenters expressed a reluctance to have EPA list used oil as a hazardous waste, but urged EPA, if used oil is to be listed, to list only those used oils that are disposed and not list used oils that are recycled.

A few commenters supported the proposal to list all used oils as hazardous waste. They stated that used oil has been historically mismanaged and presents a threat to human health and the environment.

B. Oil Filters: Summary of Major 1985 and 1991 Comments

Many comments were received on the various issues raised by EPA concerning used oil filters. In response to the November 1985 proposal to list all used oil as hazardous waste, EPA received many comments on the effect of such a listing on used oil filters. Commenters to the 1985 rule stated that used oil filters would contain used oil and, thus, would be classified as hazardous waste under the mixture rule at 40 CFR 261.3(a)(2)(iv). Further, commenters stated that, due to the weight of used oil filters, small service stations and automobile repair shops would exceed the conditionally exempt small quantity generator defintion because they would generate greater than 100 kg of hazardous waste in a calendar month. Commenters suggested that EPA exclude used oil filters from the definition of hazardous waste. Many suggested that EPA require that used oil filters be drained prior to disposal and pass the "Paint Filter Test" (SW-846 Method 9095) to qualify for such an exclusion.

A few commenters on the 1985 proposal expressed concern with any exclusion from the definition of hazardous waste for used oil filters. These commenters stated that used oil filters, particularly large filters, could contain significant quantities of oil. Further, these commenters pointed out that contaminants and toxic constitutents may be concentrated in oil filters. The commenters suggested that EPA conduct additional studies on the environmental and human health risks associated with the disposal of used oil filters.

In September 1991, EPA proposed to exempt used oil filters from the definition of hazardous waste if the filter has been crushed or drained. Thus, such filters would not have to be managed as a hazardous waste, even if individual filters exhibited a hazardous characteristic.

Most of the commenters supported EPA's proposal to exclude from the definition of hazardous waste (40 CFR 261.4(b)) used oil filters that have been drained and crushed. Commenters to the September 23, 1991 proposal raised the following two concerns regarding the proposed exemption:

1. Draining and crushing are not the only acceptable technologies for removing used oil from filters and may not be the best technologies.

2. Used oil filters do not exhibit the toxicity characteristic and should be exempt from Subtitle C regulation.

Some commenters suggested that draining used oil filters for 24 hours was sufficient and that after this time period, crushing was not necessary. This position was supported by some commenters that indicated that the cost of a crusher ranges from $1,000 to $10,000, which could be prohibitive for smaller service stations. One commenter submitted data on 31 used oil filters from trucks using gasoline (5 filters) and diesel (26 filters), which had been gravity drained for four to twenty hours. The data indicate that none of the filters exhibited the TC.

Those commenters that did not support the exclusion stated that oil filters can contain significant quantities of used oil that draining alone will not remove. The commenters disagreed as to what constitutes proper "draining and crushing." Commenters disagreed as to what constitutes adequate draining and whether crushing should be done in addition to draining. Some commenters requested that the Agency develop specifications for crushing. Other commenters stated that draining alone is not sufficient, but should be followed by crushing/dismantling and followed by recycling. Their rationale was that even after draining, filters contain 3 to 4 ounces of used oil and thus, 12 million gallons of used oil would be disposed of in Subtitle D landfills annually. Those commenters that did not support a blanket exclusion for used oil filters generally stated that the generator should test the filter with the TCLP. Based on the results of the test, the generator should handle the filters

accordingly, unless the filter will be reclaimed.

IV. Final Listing Determination

A. General

EPA regulations, based on RCRA sections 1004(5) and 3001, at 40 CFR 261.11 set forth the technical criteria to determine whether a solid waste should be listed as a hazardous waste. EPA used the technical criteria in 40 CFR 261.11 (a)(1) and (a)(3) in making today's used oil listing determinations. Subsection (a)(1) of 40 CFR 261.11 allows the Administrator to list a waste as hazardous if the waste exhibits any of the characteristics of hazardous waste. According to 40 CFR 261.11(a)(3), a waste shall be listed as hazardous if it "contains any of the toxic constituents listed in appendix VIII and, after considering the following factors, the Administrator concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. * * *" The factors to be considered in making this determination include toxicity, fate and transport, mobility and persistence, and bioaccumulation potential of the constitutents in the waste, as well as plausible mismanagement scenarios (40 CFR 261.11(a)(3)(vii)) and other federal and state regulatory actions with respect to the waste (40 CFR 261.11(a)(3)(x)).

In making a listing determination for used oil destined for disposal, EPA gave considerable attention to the current federal regulations governing used oils. EPA evaluated the technical criteria for listing in light of the current regulatory structure controlling the management of used oils and concluded that any plausible mismanagement of used oil that is destined for disposal is addressed by current requirements.

As implied in Option Three of 1991 Supplemental Notice, EPA preserved its ability to maintain the status quo if the Agency's analysis of existing regulations showed that actions have been taken to control the mismanagement of used oil. EPA finds that the current regulatory structure controlling the management of used oil destined for disposal provides adequate controls so that used oil will not pose a substantial threat to human health or the environment.

Current regulations governing the management of used oils destined for disposal include: Those of EPA and the U.S. Coast Guard for oil discharges into navigable waters; U.S. Department of Transportation requirements; EPA regulations for polychlorinated biphenyls (PCBs) under the Toxic Substances Control Act, hazardous waste characteristics applying to used oil that is disposed under RCRA, underground storage tank requirements (UST) under RCRA; Underground Injection Control (UIC) permits under the Safe Drinking Water Act; Spill Prevention, Control and Countermeasures (SPCC) plans and National Pollutant Discharge Elimination System (NPDES) storm water regulations under the Clean Water Act; and the phase down of lead in gasoline under the Clean Air Act. In combination, application of these controls imposed by EPA and other federal agencies prevent the mismanagement of used oil to such an extent that used oil destined for disposal is unlikely to pose a substantial present or potential hazard to human health and the environment.

EPA also recognizes that several states regulate used oil as a hazardous waste, and some states regulate it as a special waste. Several states ban the disposal of used oil in municipal solid waste landfills (MSWLFs). A used oil handler must comply with all state requirements applicable to used oil in his/her state, in addition to any Federal requirements that apply.

B. No List Determination for Used Oil Destined for Disposal

In making the no list determination for used oil that is destined for disposal, EPA used the technical criteria discussed in Section IV.A.

1. Toxicity of Used Oil

In the 1991 Supplemental Notice, EPA proposed to expand the basis for listing gasoline-powered engine crankcase used oil to reflect the presence of three toxic polynuclear aromatic hydrocarbons [PAHs]: Benzo[a]pyrene, benzo(b)fluoranthene, and benzo(k)fluoranthene. EPA based this expansion on the analysis of two samples of automotive crankcase used oil analyzed for benzo(k)fluoranthene and four samples of automotive crankcase used oil analyzed for benzo(a)pyrene and benzo(b)fluoranthene. With respect to the presence of PAHs in used oil, EPA believes that the current regulatory structure can control the mismanagement of recycled used oil containing toxic PAHs.

Based on the 1989/90 sampling and analysis effort the Agency tentatively determined that a high proportion of used oils from gasoline-powered engine exhibited the TC for lead and benzene. Other categories of used oil did not exhibit the TC in such a high proportion and, in fact, did not meet the criteria for listing since they did not contain constituents of concern (constituents of the TC) at levels that could pose a risk to human health and the environment. The phase down of lead in gasoline under the Clean Air Act has resulted in subsequent reduction in lead concentrations in used oil. In addition, in accordance with the Clean Air Amendments, additional phase downs are scheduled to occur, thus further reducing the lead concentration. The lowered lead concentrations in used oil reduce the potential for harm to human health and the environment from mismanagement.

2. Regulations Governing the Plausible Mismanagement of Used Oil Destined for Disposal

Regulatory programs currently in place control used oil generators, transporters, collectors and recyclers. Since 1985, EPA has promulgated several regulatory programs that directly affect the management of used oil destined for disposal (*e.g.*, the TC, the UST program, the MSWLF rule, the NPDES Storm Water program, and the Land Disposal Restrictions (LDRs). Also, several other regulatory programs that were in place even prior to 1985 continue to control some used oil management practices (*e.g.*, U.S. Department of Transportation (DOT) shipping and handling requirements). After assessing the extent and potential success of current regulatory programs and their effect on the disposal of used oil, the Agency believes that the existing network of regulations provides protection from plausible disposal mismanagement scenerios, as discussed below.

a. Overview of RCRA subtitle C regulations applicable to used oil destined for disposal. Used oils exhibiting one or more of the characteristics of hazardous waste and which are destined for disposal continue to be regulated as hazardous wastes in accordance with all applicable subtitle C regulations, except when stored in RCRA subtitle I underground storage tanks as discussed in subsection b. of this section. Mixtures of used oils and listed hazardous wastes are listed hazardous wastes, and used oil mixed with a characteristic hazardous waste must be managed as a hazardous waste if it still exhibits a characteristic.[5] Such

[5] It should be noted that mixing characteristic hazardous waste with another material to render the waste nonhazardous constitutes treatment of hazardous waste subject to applicable standards under 40 CFR parts 264–265 and 270, and the

Continued

mixtures must be managed in accordance with all applicable subtitle C regulations. Those generators identified in 40 CFR 262.34[6] and storers of hazardous used oil destined for disposal are subject to the tank system requirements at subpart J of parts 264 and 265. Used oils are also subject to the corrective action requirements of RCRA subtitle C, including sections 3004(u) and 3008(h), which apply to solid waste management units at RCRA treatment, storage, or disposal facilities.

Further, if used oil exhibits a characteristic of hazardous waste and is destined for disposal, facilities that store such used oil are subject to the tank system requirements at 40 CFR parts 264 or 265, subparts J. These requirements are designed to prevent ground water contamination and other releases to the environment and include requirements for daily inspection, tank integrity, and secondary containment. If used oil destined for disposal exhibiting a characteristic of hazardous waste is stored for greater than 90 days, the facility must be permitted under RCRA as a hazardous waste storage facility.

It is important to note that used oils exhibiting the characteristic of EP toxicity (prior to its revision) currently are prohibited from land disposal unless they meet the applicable treatment standards. Treatment standards for these wastes were promulgated with the Third Third rulemaking on June 1, 1990 (55 FR 22520). Used oils exhibiting the new TC, but not the characteristic of EP toxicity are not currently prohibited from land disposal, even if the constituent causing the waste to exhibit the TC is also controlled by the EP. LDR treatment standards for the newly identified TC wastes (including the 26 newly listed organic constituents) are scheduled to be promulgated by April 1993. Used oil which is mixed with a listed hazardous waste must meet the LDR standard for the listed waste.

b. Applicability of RCRA subtitle I regulations to used oil destined for disposal. For USTs located at permitted hazardous waste facilities subject to section 3004(u) of RCRA, the subtitle C corrective action statutory authorities supersede subtitle I corrective action requirements to avoid overlap in regulatory authority (see 40 CFR 280.60). For facilities without a final HSWA permit, subtitle I corrective action standards will apply to releases from all petroleum and hazardous substance USTs. UST corrective actions underway at a facility having interim status under RCRA subtitle C may be subject to review by permit writers during the development of the final HSWA permit. These ongoing corrective action activities may be incorporated into the facility's final RCRA permit (53 FR 37176).

As discussed in the September 1991 supplemental proposal, EPA presumes that used oil stored in underground storage tanks is destined for recycling and currently exempt from subtitle C (40 CFR 261.6(a)(3)(iii)); thus such tanks are subject to subtitle I. The Agency continues to believe that the subtitle I standards are sufficient to protect human health and the environment from the potential releases of used oil from USTs. In conclusion, the Agency continues to view subtitle I as applicable to used oil, with the exceptions noted in the preceding paragraph where RCRA subtitle C authority is in place.

c. Applicability of RCRA subtitle D regulations to used oil destined for disposal. Nonhazardous used oil may be disposed of in an industrial solid waste landfill or a MSWLF. EPA recently promulgated final disposal criteria for MSWLFs (October 9, 1991, 56 FR 50978). The revised criteria were promulgated at 40 CFR part 258 and included location restrictions, faciltiy design and operating criteria, ground-water monitoring requirements, corrective action requirements, financial assurance requirements, and closure and post-closure care requirements. In addition, many states have design and operating requirements governing industrial non-hazardous waste landfills.

d. CERCLA reportable quantitites (RQs) and used oil destined from disposal. Any waste identified as a hazardous waste (either by listing or by characteristic) under RCRA generally becomes a hazardous substance under CERCLA. Such designation subjects the hazardous waste to the section 103 reporting requirements for releases equal to or exceeding the assigned reportable quantity (RQ) of that hazardous substance. In addition, constituents in the used oil that are not defined as hazardous waste under RCRA may be designated hazardous substances under CERCLA (see 40 CFR part 302). Therefore, in accordance with § 302.6(b) concerning mixtures or solutions, immediate notification is required when an RQ or more of any of the hazardous substances are released.

e. Toxic Substances Control Act regulations and used oil destined for disposal. Section 6(e) of the Toxic Substances Control Act (TSCA) mandates that EPA control the manufacture (including import), use, processing, distribution in commerce, and disposal of PCBs. Because of the potential hazards posed by the uncontrolled use and disposal of PCBs, EPA has established a comprehensive program to control PCBs from manufacture to disposal. A primary use of PCBs, a viscous oil, was as an insulating material for electrical equipment (dielectric). PCBs were almost always mixed with mineral oil, silicone, or other oily materials when used as insulating material. TSCA regulations prohibit the use of waste oils (including used oils) containing PCBs for dust suppression. Prohibited uses include, but are not limited to, use in road oiling, use in general dust control, use as a pesticide or herbicide carrier, and use as a rust preventative on pipes (40 CFR 761.20(d)). Used oil applied for dust suppression must meet the requirements of both RCRA and TSCA.[7]

Further, a release of 1 pound of PCBs into the environment must be reported immediately to the National Response Center in accordance with section 103(c) of CERCLA. Further, under the TSCA PCB Spill Cleanup Policy, any spill of material containing 50 ppm or greater PCBs into sewers, drinking water, surface water, grazing lands, or vegetable gardens must be reported immediately (40 CFR part 761, subpart G). If a used oil contains PCBs, the most stringent, applicable reporting requirement must be followed.

f. Clean Water Act regualtions and used oil destined for disposal. In addition to the UST requirements discussed above, the storage of used oil at many petroleum-related storage facilities is subject to SPCC regulations.[8] Under section 311(j)(i)(c) of the Clean Water Act, EPA established the SPCC program (38 FR 34165, December 11, 1973) to protect surface waters and adjoining shorelines from petroleum and

notification requirements of section 3010 of RCRA. For example, mixing spent mineral spirits used as a solvent (exhibiting the characteristic of ignitability or toxicity) with used oil to render the mineral spirits nonhazardous constitutes treatment.

[6] This regulation identifies regulated generators by quantity of waste generated duration of time accumulated.

[7] Congress banned the use of any hazardous waste as a dust suppressant under RCRA § 3004(1). Therefore, as noted above, any used oil that exhibits one or more of the characteristics (other than the characteristic of ignitability) of hazardous waste is banned from use as a dust suppressant.

[8] The SPCC regulations (40 CFR 112) currently apply to on-shore and off-shore non-transportation related facilities that have the potential to discharge oil into navigable waterways and have underground storage tank capacities greater than 42,000 gallons or aboveground storage tank capacities of more than 660 gallons in a single tank or an aggregate of greater than 1,320 gallons.

other oil contamination.[9] Facilities subject to the regulations each prepare and maintain an SPCC plan, which includes provisions for appropriate containment or diversionary structures to prevent discharged oil from reaching surface waters and adjoining shorelines. A major goal of the SPCC plan is to ensure that SPCC-regulated storage tanks and storage areas are designed to protect against releases of petroleum and other oils to navigable waters and adjoining shorelines. "Oil", when used in relation to Section 311 of the Federal Water Pollution Control Act, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Concerning used oil, releases of oil to navigable waters that (1) cause a sheen to appear on the surface, (2) violate applicable water quality standards, or (3) cause a sludge or emulsion to be desposited beneath the surface of the water or upon adjoining shorelines, are reportable under 40 CFR Part 110. EPA believes that a significant number of used oil storage facilities will store used oil in tanks or containers prior to disposal. The Agency also believes that the SPCC requirements are designed to provide a sufficient level of protection to human health and the environment from potential releases of used oil to navigable water and adjoining shorelines.

Used oil generators, storage, and disposal facilities may be subject to the storm water regulations (55 FR 47990, November 16, 1990) promulgated under the Clean Water Act. The NPDES storm water regulations at 40 CFR 122.26 provide an additional layer of environmental protection against used oil disposal by industrial facilities at locations where runoff due to storm events results in releases of used oil-contaminated runoff to waters of the United States. Under these regulations, facilities with point source discharges of "storm water associated with industrial activity" to the waters of the United States, including discharges through municipal separate storm sewer systems that ultimately reach the waters of the United States, must apply for a National Pollution Discharge Elimination System (NPDES) permit. "Storm water discharge associated with industrial activity" is defined to include runoff, snowmelt runoff, and surface water runoff that is discharged and is directly related to manufacturing, processing, or raw materials storage at an industrial facility (40 CFR 122.26(b)(14)).

The storm water regulations specifically apply to active and inactive landfills, land application units, and open dumps that receive or have received any industrial wastes (*i.e.*, waste from any of the categories of facilities identified under 40 CFR 122.26(b)(14) (i) to (xi)). The storm water regulations apply to those facilities that are subject to both subtitles C and D of RCRA. Commercial or retail outlets such as service stations or quick lube shops are currently excluded from CWA permit requirements unless EPA or a State designates a particular facility for permitting under section 402(p)(2)(E) of the Clean Water Act.

g. Safe Drinking Water Act regulations and used oil destined for disposal. The Underground Injection Control (UIC) regulations at 40 CFR parts 144 through 148 were promulgated pursuant to part C of the Safe Drinking Water Act and, to the extent that the regulations address hazardous waste, RCRA. The UIC program regulates the underground injection of all fluids through wells. Under 40 CFR 144.12, "No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any injection activity in a manner that allows the movement of any fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons."

While EPA believes it is unlikely, and not practical technically, for large volumes of used oil to be disposed into injection wells, there are cases where used oil may be mixed with other fluids (i.e., wastewaters or oil and gas exploration and production wastes) and injected into UIC wells. If the presence of used oil or any constituent causes the injected fluid to be hazardous, any well injecting below an underground source of drinking water (USDW) must be permitted for hazardous waste injection. Any other well injecting a hazardous waste into or above a USDW is banned, and must be properly plugged and abandoned.

Finally, as a further measure of protection, under 40 CFR part 148 the injection of hazardous wastes for which LDR treatment standards have been promulgated is prohibited unless the waste has been treated to meet the applicable standards in 40 CFR part 268 or an exemption has been granted based on a petition submitted under 40 CFR part 148, subpart C.

h. Coast Guard regulations and used oil destined for disposal. Releases of used oil to navigable waters and shipboard management of used oil are governed by Coast Guard regulations promulgated pursuant to MARPOL 73/78.[10] Of primary importance to used oil is the regulation of bilge slop generated on-board ships. Bilge slop is a residual liquid that collects through leakage, seepage, or drainage in the holds of ships and consists primarily of water mixed with a small amount of oil. The regulations prohibit the unrestricted discharge of oil or oily mixtures into the sea and require that ships either retain bilge slop on board or separate the oil and water and retain the oil on board until the slop and oil can be discharged at a licensed shore side reception facility. Ships more than 12 nautical miles from land may only discharge oil or oily mixtures where the undiluted oil concentration is less than 100 ppm, provided the ship is not located in an ecologically sensitive area. Ships within 12 nautical miles of land may not discharge oil or oily mixtures unless the undiluted oil concentration is less than 15 ppm. The regulations also address the on shore management of bilge water at port reception facilities.

i. Department of Transportation regulations and used oil destined for disposal. The U.S. Department of Transportation (DOT) regulates the transportation of hazardous materials in commerce under the authority of the Hazardous Materials Transportation Act (HMTA) (49 CFR parts 171 to 179). Used oil is classified as a hazardous material if it meets the definition of combustible liquid (flash point below 200 °F, but equal to or greater than 100 °F) or flammable liquid (flash point below 100 °F). Used oil generators (shippers) and transporters of DOT hazardous materials have to comply with any and all applicable DOT regulations for identification and classification, packaging, marking,

[9] On October 22, 1991 (56 FR 54612), EPA proposed revisions to the 40 CFR part 112 requirements. The proposed rule addresses a number of issues, including the mandatory nature of most of the requirements, the required procedures for completion of SPCC Plans, and the addition of a facilitiy notification provision. If adopted, these changes would improve the SPCC program's control of potential releases of used oil.

[10] In 1973, the International Conference on Marine Pollution adopted the International Convention for the Prevention of Pollution by Ships, 1973. This Convention was subsequently modified by the Protocol of 1978, adopted by the International Conference on Tanker Safety and Pollution Prevention. The 1973 Convention, as modified by the 1978 protocol, is known as MARPOL 73/78. MARPOL 73/78 is an international agreement designed to address the problem of marine pollution from ships on a global scale. It contains five Annexes, each of which addresses a different type of marine pollution. Annex I addresses oil pollution and is currently in effect internationally.

labeling, and shipping papers. In addition, used oil transporters (carriers) have to comply with any and all applicable DOT regulations for placarding, use of shipping papers, recordkeeping, reporting, and incident response. Used oil that is a hazardous waste and is destined for disposal is subject to those DOT regulations referenced at 40 CFR part 262, subpart C.

j. Summary of no list decision for used oil destined for disposal. For the reasons discussed above, EPA believes that the potential scenarios under which used oil may be released to the environment are adequately controlled under existing regulations. According to current estimates, a relatively small portion of the used oil generated is disposed (80 million gallons compared to over 800 million gallons being recycled by burning for energy recovery and re-refining per year). Based on the existing regulations, EPA determined that it was not necessary to categorically list used oil destined for disposal, but instead will rely on the comprehensive set of existing regulatory controls, particularly the hazardous waste characteristics.

Although the Agency proposed to list certain used oils in the September 1991 supplemental proposal, most gasoline-powered engine oils already exhibit the TC, and listing these used oils would not affect the way these used oils must be managed. In other words, the existing characteristics will adequately capture hazardous used oils under Subtitle C without a hazardous waste listing. In addition, EPA believes that the current regulatory framework can control the mismanagement of used oil containing toxic PAHs destined for disposal. Therefore, EPA has determined that used oil from gasoline-powered engine crankcases need not be listed as a hazardous waste to ensure its proper management. As for other used oils, the data collected in support of the 1991 supplemental notice continues to support the conclusion that such oils are not typically and frequently hazardous. Those oils which may pose a threat on disposal are addressed by the current regulatory framework, including the hazardous waste characteristics.

C. Response to Major Comments

Most commenters supported a no list decision for used oil destined for disposal, as existing regulations, especially the TC rule, are adequately protective. These comments were summarized in section III.A., and responses were incorporated in the preceding preamble section. A small number of commenters favored listing all or some used oil destined for disposal as hazardous waste. These commenters cited past mismanagement of used oil as a primary reason for the necessity of a listing action. EPA believes, however, that the mismanagement incidents cited by EPA in the September 1991 notice occurred before implementation of major rulemakings governing storage of used oil. EPA believes, upon reevaluation, that the protective nature of these regulations is sufficient to guard against mismanagement of used oil until the Agency issues a hazardous waste listing determination for recycled used oil or promulgates additional management standards under RCRA section 3014.

In light of the public comments received regarding listing of gasoline-powered engine crankcase oils as proposed in Option 2, EPA believes that existing regulations prevent mismanagement of these and other used oils destined for disposal.

V. Used Oil Filter Exemption

A. Agency Decision

EPA is today finalizing the proposed exemption for used oil filters at 40 CFR 261.4(b)(13) which identifies solid wastes that are not hazardous wastes. Today's rule reduces the burden on generators to make a hazardous waste determination in a case where EPA has sufficient data to provide a categorical exemption. This exemption is limited to non-terne-plated [11] used oil filters which have been drained to remove used oil. Terne-plated used oil filters are not included in the exemption because the terne plating makes the filter exhibit the characteristic of toxicity for lead. As a practical matter, if an oil filter is picked up by hand or lifted by machinery and used oil immediately drips or runs from the filter, the filter should not be considered to be drained.

Under current RCRA subtitle C regulations, if a generator is intending to dispose of a used oil filter, the generator is required to determine whether the used oil filter exhibits any of the characteristics of hazardous waste. This determination can be made either by testing or by applying the generator's knowledge of the waste or process that generated the waste. EPA issued guidance on this issue through a memo [12] which states that the TCLP can be performed on oil filters by crushing, grinding, or cutting the filter and its contents until the pieces are smaller than one centimeter and will pass through a 9.5 mm standard sieve. If the filter exhibits any of the characteristics of hazardous waste, the generator must manage it in accordance with subtitle C requirements.

Oil filters are used in two categories of vehicles, light duty and heavy duty. Light duty vehicles include automobiles, passenger vans, and light duty trucks, such as small pickup trucks. Heavy duty oil vehicles include buses and commercial trucks, such as dump trucks, tractor-trailers, mining, or construction vehicles. Oil filters may be classified into two broad categories of cartridge or spin-on types.[13] The Filter Manufacturers Council (FMC) conducted toxicity characteristics testing on 35 light duty and 11 heavy duty spin-on oil filters. Prior to the study being undertaken, EPA reviewed FMC's sampling and analysis methodology.

In the FMC study, the spin-on filters were removed from engines at operating temperatures and either the anti-drain back valves or the filter dome end was punctured. Then, the filters were allowed to gravity drain for a 12-hour period. According to FMC, hot-draining used oil filters for 12 hours is standard industry practice. For spin-on oil filters from light-duty vehicles, the study found that none of the 35 filters exhibited the TC, although lead, chromium, cadmium, and benzene were detected. For spin-on oil filters from heavy-duty vehicles, the study determined that 5 of the 11 filters exhibited the TC for lead. These were also the five filters that were terne-plated. Terne, an alloy of lead and tin, would account for the high concentrations of lead found, 12.0–74.5 mg/l in the waste extract. A blank (unused) terne-plated oil filter had a TCLP lead concentration of 30. mg/l. The remaining six oil filters from heavy duty vehicles did not exhibit the TC. FMC later clarified their comments by writing that it is not possible to identify any categories of filters or of end uses of filters (e.g., by engine type, engine class, end use application, filter size, visual inspection of filters, etc.) which comprise exclusively terne-coated filters.

A 1990 study conducted by the Iowa Waste Reduction Center at the

[11] Terne is an alloy of tin and lead.

[12] The memorandum, dated October 30, 1990, is from Sylvia Lowrance, Director of the Office of Solid Waste, to Robert L. Duprey, Director of the Hazardous Waste Management Division in EPA Region VIII, and addresses regulatory determinations on used oil filters.

[13] Cartridge filters are typically a replaceable pleated paper filter media formed in a cylinder around a perforated metal centertube. Metal end caps and nitrile rubber grommets are used to prevent flow around the filter media. Spin-on filters are essentially cartridge filters that are assembled into a filter can or body.

University of Northern Iowa showed that 44 percent to 55 percent of the used oil could be removed through draining and about 88 percent could be removed through compaction. One commenter demonstrated, through TCLP analysis, that light-duty used automotive oil filters from which used oil is removed by pressurized air are nonhazardous. As much as 8 ounces of used oil can be removed in seconds by using this method, according to this commenter.

Based on the data submitted, non-terne-plated, hot-drained [14] used oil filters do not typically and frequently exhibit the TC. The source of the hazard exhibited by the non-terne-plated used oil filters is the used oil they contain prior to being drained; thus, as much of the oil as possible should be removed. EPA has determined that non-terne-plated used oil filters that have been hot-drained of used oil for a minimum of 12 hours after puncturing either the anti-drain back valve or the dome end do not appear to exhibit the TC. EPA is thus recommending a minimum 12-hour hot-drain time for punctured or pierced used oil filters, but is not adopting a regulatory standard in order to allow for the development of alternate used oil removal techniques. Similarly, hot-drained and crushed filters, or dismantled and drained filters do not appear to exhibit the TC. In addition, light-duty automotive used oil filters that have been subjected to air pressure for oil removal do not appear to exhibit the TC.

Terne-plated oil filters are not included in the exemption; therefore, a hazardous waste determination must be made prior to disposal in a landfill. EPA received inadequate data to make a determination on other types of filters, such as fuel filters, transmission oil filters, or specialty filters (such as cloth railroad oil filters). Since there is a lack of quantitative data on these types of filters, they are not included in the scope of the exemption being finalized today.

The Agency is recommending that the recyclable used oil and other recyclable elements of the oil filter, such as the canister, gasket, and filter paper, be separated and recycled. EPA is therefore requiring that filters qualifying for the exemption first have the used oil removed using one of the following gravity hot-draining methods:

(1) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(2) Hot-draining and crushing;

(3) Dismantling and hot-draining; or

(4) Any other equivalent hot-draining method which will remove used oil. Then, once the used oil is removed, it can be recycled (as can the scrap metal).

Finally, EPA encourages manufacturers of terne-plated filters to pursue source reduction alternatives to terne plating. EPA encourages generators to recycle used oil and used oil filters. In choosing the used oil removal technique, it is important to ensure that the operation is compatible with the ultimate recycling procedure. For example, if the filters are destined for a smelter, hot-draining and crushing may be appropriate. However, if the filters will be separated into their component parts (e.g., used oil, metal, and filtration media) and recycled separately, puncturing and gravity hot-draining may be more appropriate since crushing may hinder the separation of the metal from the filtration media. EPA also encourages steel mills and scrap metal recyclers to accept used oil filters, from which oil has been removed, as a solid waste for scrap feed in steel production.

B. Response to Major Comments

As discussed above, EPA received data that indicate that most oil filters from which used oil is removed do not exhibit a characteristic of hazardous waste, including toxicity. The Agency is not concerned about the volume of used oil remaining in the filters subsequent to draining because, according to commenter-submitted data, the filters hot-drained for at least 12 hours do not appear to be hazardous. EPA has responded to commenters advocating various methods of oil removal by promulgating an exemption for filters from which used oil has been removed through gravity hot-draining after puncturing the filter, hot-draining and crushing, or dismantling and draining. Examples of oil removal methods include flushing of oil filters with pressurized air to drain used oil from oil filters, and spinning of the oil-soaked filter paper media removed from oil filters to remove residual oil. Based on the limited data available, it appears that both of these methods adequately remove used oil in order to make oil filters nonhazardous. No technical specifications or performance standards for crushing oil filters have been developed, although such specifications were requested, because inadequate TCLP data were received to support development of a standard for crushed filters. No correlation between crushing force or crushed filter height and TCLP results could be made from the available data. Moreover, crushing specifications could restrict the development of alternative crusher designs and other oil removal techniques. Supporters of the proposed exemption contended that due to analytical data used, filters that have been drained for 12 or 24 hours of free oil will not pose any significant hazards when disposed of as nonhazardous waste. Although the comments supplied by the one commenter indicated that draining for as little as four hours may produce a nonhazardous truck filter, EPA had inadequate data to conclude that a four-hour hot-drain would be adequate for all used oil filters.

VI. Used Oil Re-Refining and Reprocessing Residuals

In the September 23, 1991, Supplemental Notice of Proposed Rulemaking (56 FR 48027), EPA proposed to list as hazardous waste four residuals from the reprocessing and re-refining of used oil. EPA's consideration of separate listings stemmed from the November 1985 proposal to list all used oil as hazardous waste and the collection of additional data on residuals between 1986 and 1988.

The specific wastes resulting from the reprocessing and re-refining of used oil that were proposed for listing as hazardous in the September 1991 notice are:

K152—Process residuals from the gravitational or mechanical separation of solids, water, and oil for the reprocessing or re-refining of used oil, including filter residues, tank bottoms, pretreatment sludges, and centrifuge sludges

K153—Spent polishing media from the finishing of used oil in the reprocessing or re-refining process, including spent clay compounds and spent catalysts

K154—Distillation bottons from the reprocessing or re-refining of used oil

K155—Treatment residues from oil/water/solids separation in the primary treatment of wastewaters from the reprocessing and re-refining of used oil

EPA received a number of comments on these proposed listings. Based on data and comment received in response to the proposal, EPA has determined that further study is required to adequately characterize residuals from reprocessing and re-refining of used oil and is today deferring a decision on its 1991 proposal to list these wastes.

EPA's proposed listing was based on data gathered from recycling facilities in 1985 and 1986. Commenters stated that recycling practices and processes had changed significantly in the intervening five to six years. These commenters

[14] "Hot-drained" means that the oil filter is drained near engine operating temperature and above room temperature (i.e., 60 °F).

cited that discontinued use of the acid-clay treatment process and the reduction of toxic constituents in the residuals.

EPA will continue to evaluate data for residuals from the reprocessing and re-refining of used oil. EPA will evaluate the management practices employed at facilities that generate these residuals to determine whether such practices pose a threat to human health and the environment.

VII. State Authorization

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 30013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. However, any authorized State requirement that is more stringent than a HSWA requirement that is less stringent than the Federal program for which the State was authorized remains authorized and in effect under State law.

Today's rule is promulgated pursuant to section 3001(g) of RCRA, a provision added by HSWA, and pursuant to section 3001(b)(1) of RCRA, a non-HSWA provision. This rule revises and narrows the scope of definition of hazardous waste to exclude non-terne-plated used oil filters that have been gravity hot-drained of used oil through puncturing the filter anti-drain back valve or the filter dome end and hot-draining, hot-draining and crushing, dismantling and hot-draining, or any other equivalent hot-draining method which will remove used oil. The exemption from the definition of hazardous waste being finalized today for used oil filters narrows the scope of the TC rule promulgated pursuant to HSWA authority as well as the characteristic of EP toxicity regulation promulgated under non-HSWA authority. To avoid any confusion regarding the status of used oil filters, EPA considers the exemption to be a HSWA rule, since it, in part, exempts wastes from a HSWA-promulgated rule.

B. Effect on State Authorizations

Authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 or RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(k). The standard promulgated today is less stringent than or reduces the scope of the existing Federal requirements. This provision appears in 40 CFR 261.4(b)(13). Therefore, authorized States would not be required to modify their programs to adopt requirements equivalent to or substantially equivalent to the provision listed above.

Because the rule is promulgated pursuant to HSWA, a State which chooses to submit a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1903. (See 40 CFR 271.24(c).)

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In authorized States with more stringent regulations, EPA will continue to enforce the State's more stringent regulations. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization package.

VIII. Regulatory Impact Analysis

Today's decision not to list used oil managed for disposal as a hazardous waste does not impose any new regulatory compliance requirements or costs on used oil generators or handlers. Although a regulatory impact analysis under Executive Order 12291 is therefore not required to support this decision, this section of today's preamble briefly summarizes the Agency's cost and general impact analysis for the previously proposed listing option being considered prior to today's rulemaking.

Costs of listing disposed used oil were evaluated in the Economic Impact Screening Analysis Section of the September 1991 Supplemental Notice preamble under the two headings of "ban on land, disposal," and "ban on road oiling." with annual cost estimates of $16.3 and $7.4 million, respectively (56 FR 48068–69).

Costs of the land disposal ban (listing of disposed oil) are relatively low for two reasons. First, relatively little used oil is formally "land managed" in recognized landfills, and it was assumed in estimating costs that both household DIY oil and non-household oil illegally dumped by either small or large quantity generators would not be controlled under the subtitle C management requirement. In addition, in the September 1991 cost analysis, it was

assumed as a best estimate that 75 percent of the land-disposed oil subject to the listing would be diverted to recycling at relatively low cost, with only the remaining 25 percent being managed at higher cost in a cement kiln or equivalent Subtitle C technology.

For road oiling, it was similarly assumed that the oil could be readily diverted to other recycling at virtually no additional cost (the cost of the ban being attributable to the higher cost of substitute dust suppression agents such as calcium chloride).

Recycling would have been promoted somewhat by the listing of used oil destined for disposal because disposal would be much more costly than recycling options. On the other hand, there would also be a perverse incentive towards illegal dumping and other improper land disposal outlets as land disposal became more costly.

IX. Regulatory Flexibility Act

The agency certifies that, within the scope of the Regulatory Flexibility Act, today's decision will not have a significant impact on a substantial number of small entities. The regulation imposes no new regulatory or economic requirements on small business.

X. Paperwork Reduction Act

This notice contains no information collection requirements, and therefore imposes no new paperwork burden.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: May 1, 1992.

F. Henry Habicht, II,

Deputy Administrator.

For the reasons set forth in the preamble, title 40 part 261 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 and 6922.

3. Section 261.4 is amended by adding paragraph (b)(15) to read as follows:

§ 261.4 Exclusions

* * * * *

(b) * * *

(15) Non-terne plated used oil filters that are not mixed with waste listed in subpart C of this part if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method which will remove used oil.

* * * * *

[FR Doc. 92–11385 Filed 5–19–92; 8:45 am]

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federal register

Wednesday
May 20, 1992

Part IV

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 2

Revision of Patent and Trademark Fees; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 920401-2101]

RIN 0651-AA54

Revision of Patent and Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes to amend the rules of practice in patent and trademark cases, parts 1 and 2 of title 37, Code of Federal Regulations, and to adjust certain patent and trademark fee amounts to reflect fluctuations in the Consumer Price Index (CPI) and to recover costs of operations. The PTO also proposes to establish fees for a Patent and Trademark Depository Library (PTDL) to access APS-Text, and for dividing a trademark application.

DATES: Written comments must be submitted on or before June 24, 1992; a public hearing will be held on June 24, 1992, at 9 a.m. Requests to present oral testimony should be received on or before June 23, 1992.

ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, Attention: Frances Michalkewicz, suite 507, Crystal Park 1, or by FAX to (703) 305-8436. A hearing will be held in suite 912 on the 9th floor of Crystal Park 2, located at 2121 Crystal Drive, Arlington, Virginia. Written comments and a transcript of the hearing will be available for public inspection in suite 507 of Crystal Park 1, at 2011 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 305-8510 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The proposed changes to the rules are designed to adjust the Patent and Trademark Office fees in accordance with the applicable provisions of title 35, United States Code, section 31 of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113), and section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), all as amended by the Patent and Trademark Office Authorization Act of 1991 (Pub. L. 102-204).

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. A 50 percent reduction in the fees paid under 35 U.S.C 41(a) and 41(b) by independent inventors, small business concerns, and nonprofit organizations who meet prescribed definitions is authorized by 35 U.S.C. 41(h).

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41 (a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price Index (CPI) over the previous 12 months.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) provides that there shall be a surcharge on all fees established under 35 U.S.C. 41(a) and 41(b) to collect $99,000,000 in fiscal year 1993.

Subsection 41(d) of title 35, United States Code, authorizes the Commissioner to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, and for each black and white copy of a patent.

Section 376 of title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty.

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Commissioner under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the Patent and Trademark Office.*

Subsection 41(i)(3) of title 35, United States Code, authorizes the Commissioner to establish reasonable fees for access to automated search systems of the Patent and Trademark Office.

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials relating to trademarks and other marks.

Section 31(a) of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113(a)), as amended, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding 12 months in the CPI.

Section 31 also allows new fee amounts to take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the Patent and Trademark Office.*

Recovery Level Determinations

The proposed fees would recover $486,000,000 in fiscal year 1993, as proposed in the Administration's budget request to the Congress.

Fees established by 35 U.S.C. 41(a) and 41(b) ("patent statutory fees") may be adjusted on October 1, 1992, to reflect any fluctuations occurring during the previous 12 months in the CPI. The Office of Management and Budget (OMB) has determined that the PTO should use Consumer Price Index-U to adjust patent statutory fees. The Department of Labor's Consumer Price Index is made public approximately 21 days after the end of the month being calculated. The patent statutory fees are expected to be adjusted by 3.3 percent, which reflects the Administration's projected Consumer Price Index-U for the 12-month period beginning October 1, 1991.

The patent statutory fees established by rule (56 FR 65142) on December 13, 1991, are proposed to be adjusted by the projected changes in the CPI of 3.3 percent. Amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user. Fees of $100 or more were rounded to the nearest $10. Fees between $2 and $99 were rounded to the nearest even number so that the comparable small entity fee would be a whole number.

Patent statutory fees are also subject to the provisions of the Omnibus Budget Reconciliation Act of 1990, as amended by Public Law 102-204. These provisions require that $99,000,000 be collected in fiscal year 1993 for deficit reduction purposes in lieu of seeking general taxpayer funds from the U.S. Treasury. The $99,000,000 is deposited in a special account in the U.S. Treasury, and is reserved exclusively for use by the PTO, and is made available to the PTO through the appropriation process.

In establishing the proposed 1993 patent statutory fees, the PTO applied the projected Consumer Price Index-U rate of 3.3 percent to the 1992 fees. The proposed 1993 fees were rounded as explained above.

Of the total amount of section 41 (a) and (b) income expected to be collected in 1993, $99 million must be deposited to the Fee Surcharge Fund.

Non-statutory patent service fees established under section 41(d) of title 35, United States Code, as amended, and PCT processing fees would be adjusted to recover planned costs in 1933, except

in the case of three patent service fees set by statute. The three fees are assignment recording fees, printed patent copy fees and photocopy charge fees.

Trademark fees may be adjusted in fiscal year 1993, in the aggregate, to reflect changes over the prior 12 months in the CPI. The OMB has determined that the PTO should use Consumer Price Index-U to adjust trademark fees, which is made public by the Department of Labor approximately 21 days after the end of the month being calculated. The trademark fees are expected to be adjusted, in the aggregate, by 3.3 percent, which reflects the Administration's projected Consumer Price Index-U for the 12-month period beginning October 1, 1991.

The PTO proposes to adjust only two trademark fees in 1993: For filing an application (§ 2.6(a)(1)) and for assignment records, abstract of title and certification (§ 2.6(b)(7)). One new fee is proposed for dividing an application (§ 2.6 (a)(19)). No other fees are proposed for change in 1993. The net effect of the proposed changes is to increase trademark fees, in the aggregate, by 3.3 percent, the expected Consumer price Index-U rate for the prior 12-month period.

Workload Projections

Determination of workloads varies by fee. Principal workload projection techniques are as follows:

Patent and trademark application workloads are projected from statistical regression models using recent application trends. Patent issues are projected from an in-house patent production model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 75 percent, 50 percent and 25 percent, respectively. Trademark affidavit projections are based on filing trends for marks registered five to six years prior to 1933. Trademark renewal projections are based on marks registered 10 years prior to 1993. Service fee workloads follow linear trends from prior years activities.

Public Access to Automated Systems

The fiscal year 1993 budget for the PTO does not include any general taxpayer funds, but requires that all of the expenses of the PTO be recovered through user fees. The expenses include the cost of providing APS-Text service to the Patent and Trademark Depository Libraries (PTDLs). Since September 1, 1991, the PTO has provided, without charge, access to APS-Text to 14 PTDLs as a pilot test program. Continuation of this service to the PTDLs, without direct charge to the PTDLs, would require support from all customers who pay for products and services from the PTO.

Therefore, the PTO is proposing the establishment of a fee to recover the cost of providing APS-Text service to the PTDLs. The fee for accessing APS-Text at the PTDLs is calculated using the same marginal cost methodology used in December 1989 to determine the fee for access to similar APS-Text services available in the Patent Search Room.

General Procedures: Any fee amount that is paid on or after October 1, 1992, would be subject to the new fees then in effect. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A "Certificate of Mailing under Section 1.8" is not "proper" for items which are specifically excluded from the provisions of § 1.8. Section 1.8 should be consulted for those items for which a Certificate of Mailing is not "proper." Such items include, inter alia, the filing of national and international applications for patents and the filing of trademark applications. However, the provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate do apply to any paper or fee (including patent and trademark applications) to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of the rules, as amended, the amount of the fee to be paid would be the fee established by the amended rules.

A comparison of existing and proposed fee amounts is included as an appendix to this proposed notice.

In order to ensure clarity in the implementation of the fee proposals, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.16 National application filing fees.

Section 1.16, paragraphs (a)–(d) and (f)–(j), if revised as proposed, would adjust patent application filing fees to reflect fluctuations in the CPI.

37 CFR 1.17 Patent application processing fees.

Section 1.17, paragraphs (a)–(g), and (m), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

Section 1.17, paragraphs (j), (n) and (o), if revised as proposed, would adjust fees established therein to recover costs.

37 CFR 1.18 Patent issue fees.

Section 1.18, paragraphs (a)–(c), if revised as proposed, would adjust the issue fee for each original or reissue patent to reflect fluctuations in the CPI.

37 CFR 1.19 Document supply fees.

Section 1.19, subparagraph (b)(4) and paragraphs (f) and (h), if revised as proposed, would adjust fees established therein to recover costs.

37 CFR 1.20 Post-issuance fees.

Section 1.20, paragraphs (a), (c), and (i), if revised as proposed, would adjust fees established therein to recover costs.

Section 1.20, paragraphs (e)–(g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.21 Miscellaneous fees and charges.

Section 1.21, subparagraphs (a)(1), (a)(5), (a)(6), (b)(2), (b)(3), and paragraphs (e) and (i), if revised as proposed, would adjust fees established therein to recover costs.

Section 1.21, paragraphs (p), if added as proposed, would establish the fee for providing to a Patent and Trademark Depository Library access to the Automated Patent System full-text search capability. The proposed $40.00 fee would recover the PTO's estimated marginal cost of providing the service to the libraries. The PTO is currently exploring the option of using a contract service bureau to provide access. At this time, the proposed fee for that option, based on preliminary analysis, is approximately $70.00. A final decision on which option the PTO will implement will be announced in the final rule.

37 CFR 1.26 Refunds

Section 1.26, paragraph (a), if revised as proposed, would increase the minimum amount of a refund, without a request, from one dollar to twenty-five dollars in accordance with the Treasury Fiscal Manual, Volume One, Part Six, Chapter 3000.

Section 1.26, paragraph (c), if revised as proposed, would provide for a refund of $1,690 if the Commissioner decides not to institute reexamination proceedings. The $1,690 refund would apply to those instances where the proposed reexamination fee of $2,250 under 37 CFR 1.20(c) was paid. The current $1,635 refund would be made in those cases where the current $2,180 reexamination fee was paid.

37 CFR 1.445 International application filing, processing, and search fees.

Section 1.445, if revised as proposed, would adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.482 International preliminary examination fees.

Section 1.482, subparagraphs (a)(1), and (a)(2)(ii), if revised as proposed, would adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.492 National stage fees.

Section 1.492, subparagraphs (a)(1)–(a)(3), and paragraph (b)–(d), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

Section 1.492, subparagraph (a)(5), if revised as proposed, would adjust the fee authorized by 35 U.S.C. 376 to recover costs.

37 CFR 2.6 Trademark fees.

Section 2.6, subparagraphs (a)(1) and (b)(7), if revised as proposed, would adjust the fees authorized by the Trademark (Lanham) Act of 1946 to reflect fluctuations in the CPI.

New section 2.6(a)(19), if added as proposed, would establish a fee for dividing a trademark application in accordance with 37 CFR 2.87.

37 CFR 2.87

Section 2.87, if revised as proposed, would establish a fee for dividing an application into two or more applications. Currently, no fee is charged for the physical act of dividing an application. Experience to date reveals that the creation of so-called "divisional" applications is labor intensive. For that reason, and because the creation of a divisional application is a significant benefit to an applicant, the PTO proposes to charge a fee for dividing an application. The fee would be due for each new file wrapper created.

Section 2.87, if revised as proposed, will also divide paragraph (a) into paragraphs (a) and (b), and renumber paragraphs (b) and (c) as (c) and (d).

Other Considerations

The proposed rule change is inconformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354); Executive Orders 12291 and 12612; and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. There are no information collection requirements relating to patent and trademark fee rules.

The PTO has determined that this proposed notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change would not have a significant adverse impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The proposed rule change increases fees by changes in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h), which provides small entities with a 50-percent reduction in the major patent fees.

The PTO has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy would be less than $100 million. There would be no major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions. There would be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the PTO is amending title 37 of the Code of Federal Regulations, Chapter I, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.16 is proposed to be amended by revising paragraphs (a)–(d), the parenthetical following paragraph (d), paragraphs (f)–(j) and the note at the end of the section to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases:
By a small entity (§ 1.9(f)) $355.00
By other than a small entity $710.00

(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3:
By a small entity (§ 1.9(f)) $37.00
By other than a small entity $74.00

(c) In addition to the basic filing fee in an original application for filing or later presentation of each claim (whether independent or dependent) in excess of 20.
(Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):
By a small entity § 1.9(f)) $11.00
By other than a small entity $22.00

(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s) per application:
By a small entity (§ 1.9(f)) $115.00
By other than a small entity $230.00
(If the additional fees required by paragraphs (b), (c), and (d) of this section are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

* * * * *

(f) For filing each design application:
By a small entity (§ 1.9(f)) $145.00
By other than a small entity $290.00

(g) Basic fee for filing each plant application:
By a small entity (§ 1.9(f)) $240.00
By other than a small entity $480.00

(h) Basic Fee for filing each reissue application:
By a small entity (§ 1.9(f)) $355.00
By other than a small entity $710.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:
By a small entity (§ 1.9(f)) $37.00
By other than a small entity $74.00

(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent.
(Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):
By a small entity (§ 1.9(f)) $11.00
By other than a small entity $22.00

(Note: See § 1.445, 1.482 and 1.492 for international application filing and processing fees.)

3. Section 1.17 is proposed to be amended by revising paragraphs (a)–(g), (j), (m)–(o) to read as follows:

§ 1.17 Patent application processing fees.

(a) Extension fee for response within first month pursuant to § 1.136(a):
By a small entity (§ 1.9(f)) $55.00
By other than a small entity $110.00
(b) Extension fee for response within second month pursuant to § 1.136(a):
By a small entity (§ 1.9(f)) $180.00
By other than a small entity $360.00
(c) Extension fee for response within third month pursuant to § 1.136(a):
By a small entity (§ 1.9(f)) $420.00
By other than a small entity $840.00
(d) Extension fee for response within fourth month pursuant to § 1.136(a):
By a small entity (§ 1.9(f)) $660.00
By other than a small entity $1,320.00
(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:
By a small entity (§ 1.9(f)) $135.00
By other than a small entity $270.00
(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:
By a small entity (§ 1.9(f)) $135.00
By other than a small entity $270.00
(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in appeal under 35 U.S.C. 134:
By a small entity (§ 1.9(f)) $115.00
By other than a small entity $230.00

* * * * *

(j) For filing a petition to institute a public use proceeding under § 1.292 ..... $1,350.00

* * * * *

(m) For filing a petition:
(1) For revival of an unintentionally abandoned application, or
(2) For the unintentionally delayed payment of the fee for issuing a patent:
By a small entity (§ 1.9(f)) $585.00
By other than a small entity $1,170.00
(n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104–$820.00 reduced by the amount of the application basic filing fee paid
(o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104–$1,640.00 reduced by the amount of the application basic filing fee paid

* * * * *

4. Section 1.18 is proposed to be amended by revising paragraphs (a)–(c) to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
By a small entity (§ 1.9(f)) $585.00
By other than a small entity $1,170.00
(b) Issue fee for issuing a design patent:
By a small entity (§ 1.9(f)) $205.00
By other than a small entity $410.00
(c) Issue fee for issuing a plant patent:
By a small entity (§ 1.9(f)) $295.00
By other than a small entity $590.00

5. Section 1.19 is proposed to be amended by revising paragraph (b)(4) and paragraphs (f) and (h) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(b) * * *
(4) For assignment records, abstract of title and certification, per patent $25.00

* * * * *

(f) Uncertified copy of a non-United States patent document, per document $25.00

* * * * *

(h) Additional filing receipts; duplicate; or corrected due to applicant error $25.00

6. Section 1.20 is proposed to be amended by revising paragraphs (a), (c), (e)-(g) and (i) to read as follows:

§ 1.20 Post issuance fees.

(a) For providing a certificate of correction for applicant's mistake (§ 1.323) $100.00

* * * * *

(c) For filing a request for reexamination (§ 1.510(a)) $2,250.00

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant
By a small entity (§ 1.9(f)) $465.00
By other than a small entity $930.00
(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant
By a small entity (§ 1.9(f)) $935.00
By other than a small entity $1,870.00
(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant
By a small entity (§ 1.9(f)) $1,410.00
By other than a small entity $2,820.00

* * * * *

(i) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable $620.00

* * * * *

7. Section 1.21 is proposed to be amended by revising paragraphs (a)(1), (a)(5), (a)(6), (b)(2), (b)(3), (e), and (i) and adding paragraph (p) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) * * *
(1) For admission to examination for registration to practice, fee payable upon application $300.00

* * * * *

(5) For review of a decision of the Director of Enrollment and Discipline under § 10.2(c) $130.00
(6) For requesting regrading of an examination under § 10.7(c) $130.00
(b) * * *
(2) Service charge for each month when the balance at the end of the month is below $1,000 ..... $25.00.
(3) Service charge for each month when the balance at the end of the month is below $300 for restricted subscription deposit accounts used exclusively for subscription order of patent copies as issued $25.00

* * * * *

(e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in a national patent application $40.00

* * * * *

(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale, each application or patent $25.00

* * * * *

(p) Library service: marginal cost for providing to a Patent and Trademark Depository Library access to Automated Patent System (APS) full-text search capability, per hour of terminal session time, including print time ..... $40.00–$70.00

8. Section 1.26 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 1.26 Refunds.

(a) Money paid in excess will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw an application, an appeal, or a request for oral hearing, will not entitle a party to demand such a return. Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amount; amounts over twenty-five dollars may be returned by check, or if requested, by credit to a deposit account.

* * * * *

(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of $1,690 will be made to the requester of the proceeding. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

9. Section 1.445 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14).....$200.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:

(i) No corresponding prior United States national application with basic filing fee has been filed.....$620.00

(ii) A corresponding prior United States national application with basic filing fee has been filed.....$410.00

(3) A supplemental search fee when required, per additional invention $170.00

* * * * *

10. Section 1.482 is proposed to be amended by revising paragraphs (a) introductory test, (a)(i), and (a)(2)(ii) to read as follows:

§ 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A preliminary examination fee is due on filing the Demand:

(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of.....$450.00

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of.....$670.00

(2) * * *

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office.....$230.00

* * * * *

11. Section 1.492 is proposed to be amended by revising paragraphs (a)(1)–(a)(3), (a)(5), paragraphs (b)–(d), and the parenthetical following paragraph (d) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) * * *

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)).....$320.00

By other than a small entity.....$640.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.9(f)).....$355.00

By other than a small entity.....$710.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)).....$475.00

By other than a small entity.....$950.00

* * * * *

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.9(f)).....$415.00

By other than a small entity.....$830.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f)).....$37.00

By other than a small entity.....$74.00

(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.9(f)).....$11.00

By other than a small entity.....$22.00

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple for dependent claim(s), per application:

By a small entity (§ 1.9(f)).....$115.00

By other than a small entity.....$230.00

(If the additional fees required by paragraphs (b), (c), and (d) are not paid on presentation of the claims for which the additional fees are due , they must be paid or the claims cancelled by amendment prior to the expiration of the time period set for response by the Office in any notice of any of fee deficiency)

* * * * *

Part 2—Rules of Practice in Trademark Cases

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be amended by revising paragraphs (a)(1) and (b)(7) and adding paragraph (a)(19) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(a) Trademark process fees.

(1) For filing an application, per class.....$210.00

* * * * *

(19) Dividing an application, per new application created.....$100.00

(b) Trademark services fees.

* * * * *

(7) For assignment records, abstract of title and certification, per registration.....$25.00

* * * * *

3. Section 2.87 is proposed to be revised to read as follows:

§ 2.87 Dividing an application.

(a) An application may be physically divided into two or more separate applications upon the payment of a fee for each new application created and submission by the applicant of a request in accordance with paragraph (d) of this section.

(b) In the case of a request to divide out one or more entire classes from an application, only the fee under paragraph (a) of this section will be required. However, in the case of a request to divide out some, but not all, of the goods or services in a class, an application filing fee for each new separate application to be created by the division must be submitted, together with the fee under paragraph (a) of this section. Any outstanding time period for action by the applicant in the original application at the time of the division will be applicable to each new separate application created by the division.

(c) A request to divide an application may be filed at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action; or during an opposition, upon motion granted by the Trademark Trial and Appeal Board. Additionally, a request to divide an application under section 1(b) of the Act may be filed with a statement of use under § 2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration or the date of expiration of the six-month response period after issuance of a final action.

(d) A request to divide an application should be made in a separate paper from any other amendment or response in the application. The title "Request to divide application." should appear at the top of the first page of the paper.

Dated: May 14, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

Note.—The following appendix will not appear in the Code of Federal Regulations.

APPENDIX A—COMPARISON OF EXISTING AND PROPOSED FEE AMOUNTS

37 CFR section, final	Description	Dec 1991	Oct 1992
1.16(a)	Basic filing fee	$690	$710
1.16(a)	Basic filing fee (small entity)	345	355
1.16(b)	Independent claims	72	74
1.16(b)	Independent claims (small entity)	36	37
1.16(c)	Claims in excess of 20	20	22
1.16(c)	Claims in excess of 20 (small entity)	10	11
1.16(d)	Multiple dependent claims	220	230
1.16(d)	Multiple dependent claims (small entity)	110	115
1.16(e)	Surcharge—Late filing fee	130	130
1.16(e)	Surcharge—Late filing fee (small entity)	65	65
1.16(f)	Design filing fee	280	290
1.16(f)	Design filing fee (small entity)	140	145
1.16(g)	Plant filing fee	460	480
1.16(g)	Plant filing fee (small entity)	230	240
1.16(h)	Reissue filing fee	690	710
1.16(h)	Reissue filing fee (small entity)	345	355
1.16(i)	Reissue independent claims	72	74
1.16(i)	Reissue independent claims (small entity)	36	37
1.16(j)	Reissue claims in excess of 20	20	22
1.16(j)	Reissue claims in excess of 20 (small entity)	10	11
1.17(a)	Extension—first month	110	110
1.17(a)	Extension—first month (small entity)	55	55
1.17(b)	Extension—second month	350	360
1.17(b)	Extension—second month (small entity)	175	180
1.17(c)	Extension—third month	810	840
1.17(c)	Extension—third month (small entity)	405	420
1.17(d)	Extension—fourth month	1,280	1,320
1.17(d)	Extension—fourth month (small entity)	640	660
1.17(e)	Notice of appeal	260	270
1.17(e)	Notice of appeal (small entity)	130	135
1.17(f)	Filing a brief	260	270
1.17(f)	Filing a brief (small entity)	130	135
1.17(g)	Request for oral hearing	220	230
1.17(g)	Request for oral hearing (small entity)	110	115
1.17(h)	Petition—not all inventors	130	130
1.17(h)	Petition—correction of inventorship	130	130
1.17(h)	Petition—decision on questions	130	130
1.17(h)	Petition—suspend rules	130	130
1.17(h)	Petition—expedited license	130	130
1.17(h)	Petition—scope of license	130	130
1.17(h)	Petition—retroactive license	130	130
1.17(h)	Petition—refusing maintenance fee	130	130
1.17(h)	Petition—refusing maintenance fee—expired patent	130	130
1.17(h)	Petition—interference	130	130
1.17(h)	Petition—reconsider interference	130	130
1.17(h)	Petition—late filing of interference	130	130
1.20(b)	Petition—correction of inventorship	130	130
1.17(h)	Petition—refusal to publish SIR	130	130
1.17(i)(1)	Petition—for assignment	130	130
1.17(i)(1)	Petition—for application	130	130
1.17(i)(1)	Petition—late priority papers	130	130
1.17(i)(1)	Petition—suspend action	130	130
1.17(i)(1)	Petition—divisional reissues to issue separately	130	130
1.17(i)(1)	Petition—for interference agreement	130	130
1.17(i)(1)	Petition—amendment after issue	130	130
1.17(i)(1)	Petition—withdrawal after issue	130	130
1.17(i)(1)	Petition—defer issue	130	130
1.17(i)(1)	Petition—issue to assignee	130	130
1.17(i)(1)	Petition—accord a filing date under § 1.53	130	130
1.17(i)(1)	Petition—accord a filing date under § 1.60	130	130
1.17(i)(1)	Petition—accord a filing date under § 1.62	130	130
1.17(i)(2)	Petition—make application special	130	130
1.17(j)	Petition—public use proceeding	1,310	1,350
1.17(k)	Non-english specification	130	130
1.17(l)	Petition—revive abandoned appl	110	110
1.17(l)	Petition—revive abandoned appl (small entity)	55	55
1.17(m)	Petition—revive unintentionally abandoned appl	1,130	1,170
1.17(m)	Petition—revive unintentionally abandoned appl. (small entity)	565	585
1.17(n)	SIR—prior to examiner's action	790	820
1.17(o)	SIR—after examiner's action	1,580	1,640

APPENDIX A—COMPARISON OF EXISTING AND PROPOSED FEE AMOUNTS—Continued

37 CFR section, final	Description	Dec 1991	Oct 1992
1.17(p)	For submission of an information disclosure statement 1.97		200
1.18(a)	Issue fee	1,130	1,170
1.18(a)	Issue fee (small entity)	565	585
1.18(b)	Design issue fee	400	410
1.18(b)	Design issue fee (small entity)	200	205
1.18(c)	Plant issue fee	570	590
1.18(c)	Plant issue fee (small entity)	285	295
1.19(a)(1)(i)	Copy of patent	3	3
1.19(a)(1)(ii)	Patent copy—expedited local service	6	6
1.19(a)(1)(iii)	Patent copy ordered via EOS—expedited service	25	25
1.19(a)(2)	Plant patent copy	12	12
1.19(a)(3)(i)	Copy of utility patent or SIR in color	24	24
1.19(b)(1)(i)	Certified copy of patent application as filed	12	12
1.19(b)(1)(i)	Certified copy of patent application as filed, expedited	24	24
1.19(b)(2)	Cert or uncert copy of patent-related file wrapper/contents	150	150
1.19(b)(3)	Cert or uncert. copies of office records, per document	25	25
1.19(b)(4)	For assignment records, abstract of title and certification	20	25
1.19(c)	Library service	50	50
1.19(d)	List of patents in subclass	3	3
1.19(e)	Uncertified statement—status of maintenance fee payment	10	10
1.19(f)	Copy of Non-U.S. patent document	12	25
1.19(g)	Comparing and certifying copies, per document, per copy	25	25
1.19(h)	Duplicate or corrected filing receipt	20	25
1.20(a)	Certificate of correction	70	100
1.20(c)	Reexamination	2,180	2,250
1.20(d)	Statutory disclaimer	110	110
1.20(d)	Statutory disclaimer (small entity)	55	55
1.20(e)	Maintenance fee—3.5 years	900	930
1.20(e)	Maintenance fee—3.5 years (small entity)	450	465
1.20(f)	Maintenance fee—7.5 years	1,810	1,870
1.20(f)	Maintenance fee—7.5 years (small entity)	905	935
1.20(g)	Maintenance fee—11.5 years	2,730	2,820
1.20(g)	Maintenance fee—11.5 years (small entity)	1,365	1,410
1.20(h)	Surcharge—maintenance fee—6 months	130	130
1.20(h)	Surcharge—maintenance fee—6 months (small entity)	65	65
1.20(i)	Surcharge—maintenance after expiration	600	620
1.20(j)	Extension of term of patent	1,000	1,000
1.21(a)(1)	Admission to Examination	290	300
1.21(a)(2)	Registration to practice	100	100
1.21(a)(3)	Reinstatement to practice	15	15
1.21(a)(4)	Certificate of good standing	10	10
1.21(a)(4)	Certificate of good standing, suitable framing	20	20
1.21(a)(5)	Review of decision of director, OED	120	130
1.21(a)(6)	Regrading of examination	120	130
1.21(b)(1)	Establish deposit account	10	10
1.21(b)(2)	Service charge below minimum balance	20	25
1.21(b)(3)	Service charge below minimum balance	20	25
1.21(c)	Filing a disclosure document	10	10
1.21(d)	Box rental	50	50
1.21(e)	International type search report	35	40
1.21(g)	Self-service copy charge	.25	.25
1.21(h)	Recording patent property	40	40
1.21(i)	Publication in the OG	20	25
1.21(j)	Labor charges for services	30	30
1.21(k)	Unspecified other services	1	1
1.21(l)	Retaining abandoned application	130	130
1.21(m)	Processing returned checks	50	50
1.21(n)	Handling fee—incomplete application	130	130
1.21(o)	Terminal use APS-text	40	40
1.21(p)	Terminal use APS-text by the PTDL's		
1.24	Coupons for patent copies	3	3
1.296	Handling fee—withdrawal SIR	130	130
1.445(a)(1)	Transmittal fee	190	200
1.445(a)(2)(i)	PCT search fee—no U.S. application	600	620
1.445(a)(2)(ii)	PCT search fee—prior U.S. application	400	410
1.445(a)(3)	Supplemental search	160	170
1.482(a)(1)(i)	Preliminary exam fee	440	450
1.482(a)(1)(ii)	Preliminary exam fee	650	670
1.482(a)(2)(i)	Additional invention	140	140
1.482(a)(2)(ii)	Additional invention	220	230
1.492(a)(1)	Preliminary examining authority	620	640
1.492(a)(1)	Preliminary examining authority (small entity)	310	320
1.492(a)(2)	Searching authority	690	710
1.492(a)(2)	Searching authority (small entity)	345	355
1.492(a)(3)	PTO not ISA nor IPEA	920	950
1.492(a)(3)	PTO not ISA nor IPEA (small entity)	460	475
1.492(a)(4)	Claims—IPEA	90	90
1.492(a)(4)	Claims—IPEA (small entity)	45	45
1.492(a)(5)	Filing with EPO/JPO search report	800	830

APPENDIX A—COMPARISON OF EXISTING AND PROPOSED FEE AMOUNTS—Continued

37 CFR section, final	Description	Dec 1991	Oct 1992
1.492(a)(5)	Filing with EPO/JPO search report (small entity)	400	415
1.492(b)	Claims—extra individual (over 3)	72	74
1.492(b)	Claims—extra individual (over 3) (small entity)	36	37
1.492(c)	Claims—extra total (over 20)	20	22
1.492(c)	Claims—extra total (over 20) (small entity)	10	11
1.492(d)	Claims—multiple dependents	220	230
1.492(d)	Claims—multiple dependents (small entity)	110	115
1.492(e)	Surcharge	130	130
1.492(e)	Surcharge (small entity)	65	65
1.492(f)	English translation—after 20 months	130	130
2.6(a)(1)	Application for registration, per class	200	210
2.6(a)(2)	Amendment to allege use, per class	100	100
2.6(a)(3)	Statement of use, per class	100	100
2.6(a)(4)	Extension for filing statement of use, per class	100	100
2.6(a)(5)	Application for renewal, per class	300	300
2.6(a)(6)	Surcharge for late renewal, per class	100	100
2.6(a)(7)	Publication of mark under § 12(c), per class	100	100
2.6(a)(8)	Issuing new certificate of registration	100	100
2.6(a)(9)	Certificate of correction of registrant's error	100	100
2.6(a)(10)	Filing disclaimer to registration	100	100
2.6(a)(11)	Filing amendment to registration	100	100
2.6(a)(12)	Filing affidavit under section 8, per class	100	100
2.6(a)(13)	Filing affidavit under section 15, per class	100	100
2.6(a)(14)	Filing affidavit under sections 8 and 15, per class	200	200
2.6(a)(15)	Petitions to the commissioner	100	100
2.6(a)(16)	Petition to cancel, per class	200	200
2.6(a)(17)	Notice of opposition, per class	200	200
2.6(a)(18)	Ex parte appeal to the TTAB, per class	100	100
2.6(a)(19)	Dividing an application, per new application created		100
2.6(b)(1)(i)	Copy of registered mark	3	3
2.6(b)(1)(ii)	Copy of registered mark, expedited	6	6
2.6(b)(1)(iii)	Copy of registered mark ordered Via EOS, expedited svc	25	25
2.6(b)(2)(i)	Certified copy of TM application as filed	12	12
2.6(b)(2)(ii)	Certified copy of TM application as filed, expedited	24	24
2.6(b)(3)	Cert. or uncert. copy of TM-related file wrapper/contents	50	50
2.6(b)(4)(i)	Cert. copy of registered mark, title or status	10	10
2.6(b)(4)(ii)	Cert. copy of registered mark, title or status—expedited	20	20
2.6(b)(5)	Cert. or uncertified copy of TM records	25	25
2.6(b)(6)	Recording trademark property, per mark, per document	40	40
2.6(b)(6)	For second and subsequent marks in same document	25	25
2.6(b)(7)	For assignment records, abstracts of title and certification	20	25
2.6(b)(8)	Terminal use T-SEARCH	40	40
2.6(b)(9)	Self-service copy charge	.25	.25
2.6(b)(10)	Labor charges for services	30	30
2.6(b)(11)	Unspecified other services	[1]	[1]
1.19(g)	Comparing and certifying copies, per document, per copy	25	25
1.24	Trademark coupons	3	3

[1] Actual Cost.

[FR Doc. 92-11779 Filed 5-19-92; 8:45 am]

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federal register

Wednesday
May 20, 1992

Part V

Department of Transportation

Coast Guard

46 CFR Part 67

Documentation of Vessels; Recording of Instruments; Fees; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 89-007a]

RIN 2115-AD29

Documentation of Vessels; Recording of Instruments; Fees

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Omnibus Budget Reconciliation Act of 1990 requires the Coast Guard to establish user fees for services related to the documentation of vessels. The Coast Guard, therefore, proposes to establish user fees for commercial vessel documentation activities and to revise existing user fees for documentation of recreational vessels and other services to reflect the actual cost of services provided.

DATES: Comments must be received on or before July 20, 1992.

ADDRESSES: Comments must be in writing and may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 89-007a), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander John J. Kelly, Chief, Plans and Analysis Branch, Planning Staff, Office of Marine Safety, Security and Environmental Protection, (202) 267-6923.

Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 89-007a) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of their comment should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments. Direct responses to individual questions concerning the rulemaking will not be made. All significant comments will be addressed in supplemental rulemakings, if necessary, or in the final rule.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Commander Bruce Russell, Project Manager and C.G. Green, Project Counsel, Office of Chief Counsel.

Background and Purpose

On November 23, 1988, Congress enacted Public Law 100-710 (the "Codification Act") which amended and codified the Ship Mortgage Act of 1920 into 46 U.S.C. chapter 313; amended section 9 of the Shipping Act of 1916 (46 U.S.C. app. 808); and eliminated the prohibition against collecting fees for commercial vessel documentation services by amending 46 U.S.C. 2110. The Codification Act was the subject of technical corrections ("Corrections") when Congress enacted Public Law 101-225. Both the Codification Act and the Corrections introduced significant changes which are at variance with the former law and with existing Coast Guard regulations.

Most of the provisions of the Codification Act which require changes to the Coast Guard's regulations became effective on January 1, 1989. Certain of the changes were unequivocal and were implemented by an interim final rule published October 12, 1989 (54 FR 41835). The interim final rule was adopted as final in a rulemaking published January 10, 1991 (56 FR 960).

Other statutory revisions, some of which became effective on January 1, 1989, and others which became effective on January 1, 1990, required a more considered approach, including the opportunity for public comment. Because the intent of the Codification Act and the Corrections was to simplify and streamline the documentation process, the Coast Guard proposed on March 26, 1992 (57 FR 10544), to revise all of its existing vessel documentation regulations. The purpose of the proposed revision was to clarify and simplify the rules and present them in a more orderly fashion.

In addition to the foregoing, the Omnibus Budget Reconciliation Act of 1990 ("Reconciliation Act") (Public Law 101-508) requires the Coast Guard to establish user fees for, among other things, Coast Guard services related to vessel documentation. The fees in this proposal are based on the revisions to part 67 proposed in the notice of proposed rulemaking described above. Accordingly, the sections referenced in this proposal correlate to the proposed reorganization of part 67 (57 FR 10544), and not to the current regulations.

Prior to the Codification Act, the only vessel documentation fees prescribed by the Coast Guard were fees for services related to recreational licenses (documentation fees for yachts or pleasure vessels eligible for documentation), and several fees prescribed by statute for documentation-related activities. Since 1981, annual Transportation Appropriation Acts have specifically prohibited the Coast Guard from conducting recreational vessel documentation activities, except to the extent that user fees are collected. Recreational vessel documentation fees were specifically authorized in 46 U.S.C. 12109(c). However, in repealing the general prohibition against user fees, the Codification Act eliminated the need for specific authority for yacht documentation fees and for statutes prescribing specific fees for filing and recording activities. Fees for filing and recording may now be prescribed under the Coast Guard's general user fee authority using the criteria in 31 U.S.C. 9701 to reflect current costs associated with filing and recording activities under 46 U.S.C. chapter 313. Further, the Reconciliation Act requires the establishment of fees for documentation of both commercial and recreational vessels using those same criteria.

The Coast Guard proposes to recover, to the extent of existing authority, current operating and overhead costs associated with vessel documentation and filing and recording activities under 46 U.S.C. chapters 121 and 313 by:

(1) Revising existing user fees in 46 CFR subpart 67.43 to reflect current costs of providing services; and

(2) Establishing commercial vessel documentation user fees which were previously prohibited.

The documentation of recreational vessels is done solely at the discretion of the owner and has been viewed by Congress and others as providing a

privilege to the owner; specifically the qualification to be subject to a preferred mortgage. The existing recreational vessel documentation fees, previously authorized under 46 U.S.C. 12109, have not been revised since 1982. The Coast Guard proposes to update these fees to reflect current activity costs of providing vessel documentation services for these vessels. Although a fee will be charged for late renewals, for renewals at a port other than the vessel's port of record, or for renewals requiring mailing of the decal to a place other than the vessel owner's address of record, no fee will be prescribed for change of address of managing owner or for renewals at the vessel's port of record. The annual program costs of these latter activities, with the noted exceptions, have been subsumed as part of the overhead costs of the vessel documentation program to minimize administrative costs to the Coast Guard and to vessel owners.

The fees for certified copies of a recorded or filed instrument and copies of any other document are to be calculated in accordance with 49 CFR part 7—Public Availability of Information.

Adjustments of fees to accommodate changes in the cost of providing the services is provided for in 46 U.S.C. 2110. The Coast Guard intends to review the fees annually to determine if adjustments or changes to the fees are necessary. The Coast Guard will revise these proposed fees when costs change because of inflation, deflation, or changes in the way the services are provided. New statutes may require the Coast Guard to establish new regulations or make substantive amendments to existing regulations. When this occurs, the Coast Guard will propose appropriate user fees in each rulemaking.

Authority to recover "appropriate collection and enforcement costs associated with delinquent payments of the fees" is provided in 46 U.S.C. 2110. The Coast Guard may employ any government agency (Federal, State, or local) or private enterprise (e.g., collection agency) to recover delinquent fees or civil penalty charges. Since the Coast Guard proposes to collect fees prior to the services being provided, delinquent payments should not occur in most cases.

Discussion of the Proposed Rules

Proposed §§ 67.89 and 67.101 respectively, provide for a fee for application for a waiver of evidence of build and application for a waiver of production of passage of title in the form of a recordable bill of sale. Fees have been charged for recording bills of sale since at least 1920. The process required to study the relevant submissions and determine the propriety of granting a waiver is more time consuming and requires more discretion than reviewing and recording a bill of sale. It is therefore illogical to charge for filing bills of sale, but not for reviewing waivers.

Neither proposed § 67.117, which provides that a fee must be paid to apply for a change in vessel name, nor proposed § 67.133, which provides that a fee must be paid to apply for a wrecked vessel determination reflects a change from present practice.

Proposed § 67.141 provides that a fee must be paid for application for documentation, exchange or replacement of a Certificate of Documentation, or return of a vessel to documentation. Such fees are presently charged only for recreational vessels. The amount of the fee will vary depending on the endorsement sought.

Proposed § 67.163 includes a provision that an endorsement may be renewed at any port instead of only at the vessel's port of record. However, because the Coast Guard will incur additional costs for renewal at other than the port of record, the fee specified in subpart Y will be applicable when renewal is accomplished at a port other than the vessel's port of record or when the renewal decal is mailed to a place other than the managing owner's address of record. In addition, a new paragraph provides for a late renewal fee which is applicable sixty days after the endorsement expires, provided the vessel has not been administratively removed from the list of actively documented vessels. Once the vessel has been removed from the list of active vessels, application must be made to return the vessel to documentation, and any fees which would normally apply to that transaction will apply.

Proposed § 67.171 does not require payment of a fee in order to have a vessel deleted from documentation, but does provide that a fee must be paid in order to obtain a certificate evidencing deletion from documentation.

Proposed § 67.175 provides that a fee must be paid to apply for a new vessel determination. This fee will apply whether a determination is sought that the vessel is new, or that the vessel is not new. At the present time a fee is charged only when the applicant seeks a determination that the vessel is new.

Proposed § 67.177 provides for a fee for application for a rebuild determination. Although there is no fee at the present time, such determinations are very time consuming, requiring a great deal of professional expertise. For that reason, rebuild determinations represent a significant cost to the government. The fee will be assessed each time the owner or the owner's representative makes a written request for a determination.

Proposed § 67.203 provides that an instrument will not be accepted for filing and recording if it is not accompanied by the applicable fee.

Proposed § 67.303 provides for a fee to obtain a copy of a vessel's Abstract of Title. The Coast Guard proposes to eliminate the fee presently charged for forwarding the Abstract of Title to another port upon application for change in home port (proposed to be called "port of record").

Proposed subpart Y contains the fees which would be charged for various vessel documentation transactions. Table 1 summarizes the fees and compares the proposed fees with the existing fees.

TABLE 1.—FEE SUMMARY AND COMPARISON

	Existing fee	Proposed fee all vessels
Application for initial basic documentation (includes all required initial submissions in support of application under 46 CFR 67.17-3, 67.17-5, 67.17-9, and 67.17-11).	$100 (yachts) No fee (comm'l)	$133 plus endorsement fees.
Endorsements:		
Recreational	No fee	No fee.
Registry	No fee	No fee.
Fishery	No fee	$12.
Great Lakes	No fee	$29.
Coastwise	No fee	$29.

TABLE 1.—FEE SUMMARY AND COMPARISON—Continued

	Existing fee	Proposed fee all vessels
NOTE: Where multiple endorsements are requested on the same application, only the highest single endorsement fee will be charged		
Renewal of the endorsement upon the Certificate of Documentation.	No fee	No fee.
NOTE: No fee will be prescribed for the annual endorsement renewal required by proposed § 67.163, provided the renewal is accomplished at the vessel's port of record, and the renewal decal is mailed to the managing owner's address of record. The program costs of renewals have been subsumed as part of the overhead and are, therefore, spread among all other fees. The decision to do this was based on an attempt to minimize administrative costs to the Coast Guard and vessel owners		
Renewal of the endorsement at other than the home port	No fee	$5.
Mailing renewal decal to place other than managing owner's address of record.	No fee	$5.
Late renewal of endorsement upon the certificate of documentation.	No fee	$5.
Application for exchange of certificate of documentation (includes all changes at time of exchange in accordance with 46 CFR 67.23-3(a): (fee will be applied only once at time of exchange).	$50 (yachts) change of vessel name $100—all vessels.	$84 plus fishery, coastwise, or Great Lakes endorsement fees.
Notification of address change of managing owner. (This notification is beneficial to the program and charging for it might lead to lessened compliance with the requirement for notification).	No fee	No fee.
Applciation for replacement of lost or mutilated documents. (46 CFR 67.23-7(a)).	$50 (yachts)	$50.
Application for replacement of wrongfully withheld document. (46 CFR 67.23-7(a), 67.25-11(a)).	No fee	No fee.
Application for approval of exchange of document covered by mortgage (includes all processing required by 46 CFR 67.25-9).	No fee	$24.
Filing and recording:		
Bills of sale	$.20/100 wds	$8/pg.
Mortgages	$.20/100 wds	$4/pg.
Notice of claim of lien	No fee	$8/pg.
Waiver of original build evidence or chain of title in recordable form.	No fee	$15 each.
Certificates of deletion from documentation	No fee	$15.
General Index (46 CFR 67.41-1)	$20/100 wds	No fee.
Abstract of title not for record	$.20/100 wds	$41.
Certificate of Ownership	$1	To be deleted.
Certified copy of filed or recorded instrument	$20/100 wds	IAW section 7.95 of title 49 CFR.
Copies of any other document	IAW section 7.95 of title 49 CFR	IAW section 7.95 of title 49 CFR.
Application for new vessel determination	$200	$166.
Application for rebuilt determination	No fee	$450.
Application for wrecked vessel determination	$200	$555.
Application for certificate of compliance in accordance with 46 CFR part 68 (Bowaters).	No fee	$55.
Flag/funnel mark	$100	To be deleted.

Regulatory Evaluation

This proposal is not major under Executive Order 12291, but because it concerns matters on which there is substantial public interest, it is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The following constitutes the draft regulatory evaluation for the rulemaking.

The Omnibus Reconciliation Act of 1990 requires the Coast Guard to collect user fees for services provided under Subtitle II of title 46. These services include: Vessel documentation, vessel inspection, marine licensing, plan review and equipment approval, and foreign vessel examinations. The bulk of this analysis will describe the vessel documentation fee structure and its cost impacts on industry and the public. Because the services performed under these regulations may impact the same individuals or companies, it is necessary to briefly examine the cost of these regulations combined. Although precise final cost impacts await further study, the total amount to be collected for services provided under Subtitle II of title 46 U.S.C. is estimated to be less than $45 million on an annual basis. This is well below the $100 million threshold that would make this regulation a major regulation. The Coast Guard also finds that these regulations will not have a significant impact on inflation, any one industry, geographical region, or international trade.

Estimated annual costs of the user fees associated with this regulation are $4,779,000 to the recreational boating community, and $4,156,000 to the commercial vessel industry, totaling $8,935,000. User fees are already in place for 60 percent of vessel documentation activities, including documentation of recreational vessels, new vessel determinations, wrecked vessel determinations, and recording of bills of sale and mortgages.

Information on the number and type of discrete vessel documentation activities and the number of transactions per activity was provided by the program manager, vessel documentation officers, and Marine Safety Information System ("MSIS") data. The amount of time required to complete each transaction was estimated by vessel documentation officers and the program manager, based on the streamlined procedures set forth in a notice of proposed rulemaking on March 26, 1992 (57 FR 10544).

Program costs were computed using COMDTINST 7310.10, the Standard Rate Instruction. An average billable hourly rate was determined to be $49.75 per hour, which includes costs attributable to the MSIS computer, which supports the vessel documentation program. The Coast Guard estimates MSIS costs to be

$1,578,000 per year. Total program costs are estimated to be $8,935,000. User fee receipts for commercial vessel documentation will be based on that fraction of vessel documentation activities that are for commercial vessels. For a vessel that is primarily used for recreational purposes (greater than 50 percent), the bulk of the fee collections would be identified as for the documentation of a "yacht."

The cost of these regulations to a typical owner of a new commercial vessel will be approximately $157–$210. (See Table 5.) These fees are relatively insignificant costs when compared to overall commercial vessel costs. Moreover, when one considers the fact that the Coast Guard proposes no fee for the annual reneweal of the endorsement, the proposed fees are much lower than the cost of registering and renewing license plates for commercial vehicles. A survey of several states shows that the license fee for a commercial vehicle ranges for a low of $20.00 per year for a pick up truck in one state to several hundred dollars for a tractor trailer. When revenues are compared to vessel documentation costs, it should be noted that daily rental fees for commercial vessels range from several hundred to several thousand dollars.

Yacht owners who have vessels worth from tens of thousands to millions of dollars should be negligibly impacted by these increased fees. As in the case of the proposed commercial vessel fees, the proposed recreational vessel fees are in many cases significantly lower than the costs of state registration for personal automobiles and motor homes.

Table 1 compares the present fees and the proposed fees. Table 2 compares typical vessel documentation transactions in order to demonstrate the impact the proposed fees would have on the average vessel documentation transaction.

TABLE 2.—TYPICAL DOCUMENTATION COSTS

Recreational vessel	Existing fee	Proposed fee
Initial Documentation		
Basic document	$100	$133
Recreational endorsement		
Bill of sale recording (1 pg)	1	8
Mortgage recording (4 pg)	16	16
Total	117	157
Basic document		133
Fishery endorsement		12
Recording 1 pg bill of sale	1	8
Recording 5 pg mortgage	24	20
Total	25	173

TABLE 2.—TYPICAL DOCUMENTATION COSTS—Continued

Recreational vessel	Existing fee	Proposed fee
Commercial document (coastwise/Great Lakes)		
Basic document		133
Coastwise or Great Lakes endorsement		29
Recording 1 pg bill of sale	1	8
Recording 10 pg mortgage	125	40
Total	126	210
Exchange of Document		
Recreational vessel—ownership and name change:		
Basic document	100	84
Recreational endorsement		(1)
Recording 1 pg bill of sale	1	8
Recording 4 pg mortgage	16	16
Total	117	108
Commercial vessel—Ownership and trade change:		
Basic document		84
Coastwise endorsement		29
Recording 1 pg bill of sale	1	8
Recording 10 pg mortgage	125	40
Total	126	161

(1) No fee.

The only new fees (Rebuilt and Wrecked Vessel Determination fees) which are more costly than the initial documentation fees apply to the commercial vessel industry and are relatively uncommon. Of the 215,000 vessels currently documented, an average of only 15 vessels annually will be required to pay the $450 fee for a rebuilding determination. Rebuilding a vessel is often a major financial undertaking, costing tens of thousands to millions of dollars. The financial impact of the Rebuilt Vessel Determination fee on vessel owners will be minimal. A very small number of vessel owners, generally fewer than four per year, will have to pay the $555 fee for a Wrecked Vessel Determination. The financial impact of this fee compared to the overall undertaking will be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C 632).

The proposed user fee regulations will apply to the following small entities: small businesses, individuals, nonprofit organizations, and municipal governments currently owning documented vessels or seeking to document vessels in the future; brokers, attorneys, and law offices providing vessel documentation services; small shipbuilders building vesels which are subsequently documented; boat dealers selling vessels of at least 5 net tons in size; and lending institutions engaging in preferred mortgage financing.

The new user fees and changes in existing fees being proposed in this rulemaking reflect the cost to the Coast Guard of providing the related documentation services and, when compared to the cost or value of the vessel, are minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this proposal will economically effect your business.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule which contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This proposal contains no collection of information requirements.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposal has also been reviewed under the criteria of Executive Order 12778 and there is no preemptive effect to be given to these regulations.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental

documentation. This proposal deals solely with user fees required in order to obtain privileges as vessels of the United States and to record title and encumbrance instruments. These regulations are administrative in nature and clearly have no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend proposed 46 CFR part 67 which was published on March 26, 1992 (57 FR 10550), as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. App. 802, 809, 841a, 876, 883; 49 U.S.C. 322; 49 CFR 1.46.

2. New Subpart Y is added, to read as follows:

Subpart Y—Fees

Sec.

Subpart Y—Fees

§ 67.500 Applicability.

(a) This subpart specifies fees for documentation services provided for vessels. Fees are summarized in Table 67.550.

(b) No separate fees are specified for the annual renewal of the endorsement upon the Certificate of Documentation, unless renewal is late or renewal is at a port other than the port of record.

(c) Application fees under this subpart are not refundable.

§ 67.501 Application for Certificate of Documentation.

The application fee for an initial Certificate of Documentation in accordance with subpart K of this part is $133.00. No additional charge will be made for a recreational or registry endorsement or both if part of the same application. If application is made for a coastwise, a Great Lakes, a coastwise Bowaters, or a fishery endorsement the applicable fee in § 67.511 will be charged in addition to the application fee. The application fee does not include the fee in § 67.527 for filing and recording any required bills of sale or instruments in the nature of a bill of sale, or the application fee in § 67.519 for waivers in accordance with §§ 67.89 or 67.101.

§ 67.503 Application for exchange or replacement of a Certificate of Documentation.

(a) The application fee for exchange or the simultaneous exchange and replacement of a Certificate of Documentation in accordance with subpart K of this part is $84.00. No additional charge will be made for a recreational or registry endorsement or both if part of the same application. If application is made for a coastwise, a Great Lakes, a coastwise Bowaters, or a fishery endorsement the applicable fee in § 67.511 will be charged in addition to the application fee. Only a single fee will be assessed when two or more reasons for exchange occur simultaneously.

(b) This fee does not apply to:

(1) Endorsement of a change in the owner's address;

(2) Exchange or replacement solely by reason of clerical error on the part of a documentation officer; or

(3) Deletion of a vessel from documentation.

§ 67.505 Application for return of vessel to documentation.

The application fee for a return of a vessel to documentation after deletion in accordance with subpart K of this part is $84.00. No additional charge will be made for a recreational or registry endorsement or both. If application is made for a fishery, coastwise, or Great Lakes endorsement, an additional fee will be required in accordance with § 67.511.

§ 67.507 Application for replacement of lost or mutilated Certificate of Documentation.

The application fee for replacement of a lost or mutilated Certificate of Documentation in accordance with subpart K of this part is $50.00. This fee does not apply to a replacement due to a wrongful withholding.

§ 67.509 Application for approval of exchange of Certificate of Documentation requiring mortgagee consent.

The application fee for approval of exchange of a Certificate of Documentation in accordance with subpart K of this part is $24.00.

§ 67.511 Application for trade endorsement(s).

(a) *Coastwise or Great Lakes endorsement.* The application fee for a coastwise or a Great Lakes endorsement, or both , in accordance with subpart B of this part is $29.00.

(b) *Coastwise Bowaters endorsement.* The application fee for a coastwise Bowaters endorsement in accordance with 46 CFR part 68 is $29.00.

(c) *Fishery endorsement.* The application fee for a fishery endorsement in accordance with subpart B of this part is $12.00. No fee will be charged for a fishery endorsement if it is requested as part of the same application for a coastwise, Great Lakes, or coastwise Bowaters endorsement.

§ 67.513 Application for evidence of deletion from documentation.

The application fee for evidence of deletion from documentation in accordance with supbart L of this part is $15.00.

§ 67.515 Application for renewal at port other than port of record.

The application fee for renewal in accordance with subpart L of this part at a port other than the vessel's port of record is $15.00.

§ 67.517 Application for late renewal.

The application fee for a late renewal in accordance with subpart L of this part is $5.00.

§ 67.519 Application for waivers.

The application fee for waiver of original build evidence in accordance with subpart F of this part, or for waiver of bill of sale eligible for filing and recording in accordance with subpart E of this part, is $15.00. In cases where more than one waiver is required, each waiver application is subject to this fee.

§ 67.521 Application for new vessel determination.

The application fee for a new vessel determination in accordance with subpart M of this part is $166.00.

§ 67.523 Application for wrecked vessel determination.

The application fee for a determination of whether a vessel is entitled to coastwise, Great Lakes, and fisheries privileges as a result of having been wrecked in waters adjacent to the United States and repaired in accordance with subpart J of this part is $555.00. This application fee is in addition to the cost associated with the vessel appraisals.

§ 67.525 Application of determination of rebuilding

The application fee for a determination of whether a vessel has been rebuilt in accordance with subpart M of this part is $450.00. This application fee will be assessed for each request submitted in writing by the vessel owner or the vessel owner's representative.

§ 67.527 Application for filing and recording bills of sale of instruments in the natural of a bill of sale.

The application fee for filing and recording bills of sale and instruments in the nature of a bill of sale in accordance with subpart P of this part is $8.00 per page.

§ 67.529 Application for filing and recording mortgages and related instruments.

The application fee for filing and recording mortgages and relating instruments in accordance with subpart Q of this part is $4.00 per page.

§ 67.531 Application for filing and recording notices of claim of lien.

The application fee for filing and recording notices of claim of lien in accordance with subpart R of this part is $8.00 per page.

§ 67.533 Application for Certification of Compliance.

The application fee for a Certificate of Compliance to be issued in accordance with regulations set forth in 46 CFR part 68 is $55.00.

§ 67.535 Issuance of Abstract of Title.

The issuance fee for the Abstract of Title in accordance with subpart T of this part is $41.00.

§ 67.537 Copies of instruments and documents.

The fee for furnishing a copy of any instrument is calculated in accordance with 49 CFR 7.95.

§ 67.550 Fee summary table.

TABLE 67.550.—SUMMARY OF FEES

Activity	Reference	Fee
Applications:		
Initial certificate of documentation including registry or recreational endorsement or both	Subpart K	$133
Exchange of certificate of documentation including registry or recreational endorsement or both	do	84
Return of vessel to documentation including registry or recreational endorsement or both	do	84
Replacement of lost or mutilated certificate of documentation	do	49
Approval of exchange of certificate of documentation requiring mortgagee consent	do	24
Trade endorsement(s):		
Coastwise endorsement	do	29
Coastwise Bowaters endorsement	46 CFR part 68	29
Great Lakes endorsement	Subpart B	19
Fishery endorsement	do	12
NOTE: When multiple endorsements are requested on the same application, only the single highest applicable endorsement fee will be charged, resulting in a maximum endorsement fee of $29.00		
Evidence of deletion from documentation	Subpart L	15
Renewal at port other than port of record	Subpart L	5
Late renewal fee	do	5
Waivers:		
Original build evidence	Subpart F	15
Bill of sale eligible for filing and recording	Subpart E	15
Miscellaneous applications:		
Wrecked vessel determination	Supbart J	555
New vessel determination	Subpart M	166
Rebuild determination—preliminary or final	do	450
Filing and recording:		
Bills of sale and instruments in nature of bills of sale	Subpart P	[1] 8
Mortgages and related instruments	Subpart Q	[1] 4
Notice of claim of lien and related instruments	Subpart R	[1] 8
Certificate of compliance:		
Certificate of compliance	46 CFR part 68	55
Miscellaneous:		
Abstract of title	Subpart T	41
Copy of instrument or document.	Fees will be calculated in accordance with 49 CFR 7.95.	

[1] Per page.

Dated: May 13, 1992.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 92-11801 Filed 5-19-92; 8:45 am]

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federal register

Wednesday
May 20, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Cheyenne River Sioux Tribe of South Dakota's Liquor Ordinance; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Cheyenne River Sioux Tribe of South Dakota's Liquor Ordinance

May 14, 1992.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Cheyenne River Sioux Tribe of South Dakota's Liquor Ordinance No. 48 adopted on February 7, 1991, relating to the use and distribution of liquor was duly adopted by the Cheyenne River Sioux Tribe of South Dakota by Ordinance No. 48 (as amended February 7, 1991). The Ordinance provides for the regulation of possession, consumption and importation of alcohol into the area of the Cheyenne River Sioux of South Dakota and the surrounding Indian Country under the jurisdiction of the Cheyenne River Sioux. (See 18 U.S.C. 1151 and 1161).

DATES: This Ordinance is effective as of May 20, 1992.

FOR FURTHER INFORMATION CONTACT: Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street NW., MS 2612–MIB, Washington, DC 20240–4001; telephone (202) 208–4400, (FTS) 268–4400.

SUPPLEMENTARY INFORMATION: Ordinance No. 48, as amended February 7, 1991, reads as follows: The Cheyenne River Sioux Tribal Council, acting in accordance with the customary law and practice of the Cheyenne River Sioux Community hereby adopts the following ordinance governing the possession, consumption and importation of alcohol into the Cheyenne River Sioux Reservation.

Section 1. Legislation Findings and Policy

Section 1–1–1. Alcohol Abuse is an Epidemic

The Tribal Council, being vested with the power to protect the public health and to provide for the peace and safety of residents of the Cheyenne River Indian Reservation, hereby finds that alcohol abuse is an epidemic within the territory of the Cheyenne River Sioux Tribe, and further finds that:

(A) Alcohol abuse leads to frequent early loss of life and morbidity among tribal members and other residents of the Reservation. For example, the age adjusted accident death rates due to homicide, suicide, motor vehicle accidents and diseases related to alcohol abuse are several times higher among tribal members than among the general population of the United States, and 90 to 95% of serious trauma cases treated by the Indian Health Service (IHS) on the Reservation are alcohol related.

(B) Alcohol abuse results in dysfunctional families on the Reservation, and the vast majority of child abuse, spousal abuse and elderly abuse that occurs on the Reservation is alcohol related.

(C) Fetal Alcohol Syndrome and Fetal Alcohol Effect occur at alarming rates among children born within the territory of the Tribe and children born with prenatal alcohol damage have difficulty caring for themselves all of their lives. The Tribe has a compelling interest in protecting children from Fetal Alcohol Syndrome and Fetal Alcohol Effect.

(D) Unemployment ranges from 60 to 65% among tribal members on the Reservation and poverty is widespread. Many tribal members suffer serious economic deprivation due to alcohol abuse, ranging from unemployment to starvation.

(E) Alcohol abuse contributes to the vast majority of the crime which takes place within tribal territory and places heavy burdens on the tribal criminal justice system and the tribal courts.

(F) Alcohol abuse has a devastating impact on our families and the Reservation Community, and the Tribal Council has a duty to combat alcohol abuse.

(G) Both the Tribe and the Federal Government devote tremendous resources to prevent and treat problems of a alcohol abuse on the Reservation, yet even the combined prevention and treatment programs sponsored by the Tribe and the Federal Government are not sufficient to address the problems of alcohol abuse. Far more must be done.

(H) The Tribe must exercise its regulatory authority to combat the problems of alcohol abuse on the Reservation through a comprehensive, consistent and clearly defined plan to minimize alcohol consumption on the Reservation and to discourage unsafe drinking practices. In addition, the Tribe must raise additional revenue to combat the problems of alcohol abuse.

Section 1–1–2. Declaration of War on Alcohol Abuse

For the spiritual well-being of our children and families and for the survival and strengthening of our people, the Cheyenne River Sioux Tribe declares War on Alcohol Abuse and strives for the elimination of alcohol abuse and its associated problems from the Cheyenne River Indian Reservation by the year 2000. In furtherance of the Tribe's War on Alcohol Abuse, the Tribal Council hereby declares that it is the policy of the Cheyenne River Sioux Tribe:

(A) To minimize alcohol consumption among residents of the Reservation;

(B) To discourage unsafe drinking practices, including, but not limited to, driving while intoxicated, alcoholism or chronic intoxication, violence related to alcohol abuse, public intoxication and drinking during pregnancy;

(C) To minimize the adverse health effects of drinking alcohol through prevention, regulation and treatment;

(D) To protect unborn children, who are people in their own right, from prenatal alcohol damage;

(E) To control the supply of alcoholic beverages through taxation and regulation, and to control conditions of availability of alcoholic beverages through education and regulation;

(F) To maximize education, prevention and treatment programs to fight alcohol abuse; and

(G) To cause those who sell or consume alcoholic beverages to bear a greater proportion of the costs associated with alcohol abuse through taxation of alcoholic beverages and alcoholic beverage dealers and dedicating revenue derived therefrom for alcohol abuse education, enforcement, prevention, regulation and treatment.

Section 2. General Provisions and Definitions

Section 2–1–1. Delegated Authority

In accordance with Article IV, section 3 of the Constitution (*Future powers*), the Tribal Council of the Cheyenne River Sioux Tribe hereby exercises the authority delegated to the Tribe by the Congress of the United States of America to regulate the manufacture, distribution, sale, possession and consumption of alcoholic beverages within the territory of the Tribe.

Section 2–1–2. Statement of Purpose

The purpose of this Alcoholic Beverages Control Law is to regulate the manufacture, distribution, sale, possession and consumption of liquor on the Cheyenne River Indian Reservation. It is the Cheyenne River Sioux Tribe's intent in enacting this Ordinance to prohibit all traffic in liquor on the Cheyenne River Indian Reservation

except to the extent allowed and permitted under the express terms of this Ordinance. Any person desiring to engage in the possession, sale, trade, transport or manufacture of alcoholic beverages on the Cheyenne River Sioux Indian Reservation shall comply with the rules and regulations set forth in this Alcoholic Beverages Control Law. This Ordinance shall be cited as the "Cheyenne River Sioux Alcoholic Beverages Control Law" and is promulgated pursuant to the constitutional, delegated and inherent authority of the Tribe for the purpose of protecting the welfare, health, peace, morals and safety of all people residing on the Cheyenne River Indian Reservation. All the provisions of this Ordinance shall be liberally construed to accomplish the above-declared purpose.

Section 2–1–3. Applicability

This Ordinance shall apply to all persons engaged in the activities described herein on any and all lands and areas within the exterior boundaries of the Cheyenne River Indian Reservation, including lands here in fee, and all other lands subject to the jurisdiction of the Cheyenne River Sioux Tribe.

Section 2–1–4. Definitions

The terms used in this Alcoholic Beverages Control Law, unless the context plainly otherwise requires, shall mean:

(A) "Alcoholic beverage," any distilled spirits, wine and malt beverages as defined in this Ordinance.

(B) "Alcoholic Beverage Dealer," any person who sells or engages in commercial traffic in alcoholic beverages, including manufacturers, retailers, solicitors, transporters and wholesalers.

(C) "Cheyenne River Indian Reservation" shall include any and all lands within the territory of the Cheyenne River Indian Reservation as set forth in Article I of the Constitution of the Cheyenne River Sioux Tribe, whether said lands are trust, allotted or lands held in fee patent status.

(D) "Commission," the Alcoholic Beverage Control Commission.

(E) "Contraband," any alcoholic beverage introduced into, or possessed, offered for sale or used within, the territory of the Tribe contrary to tribal law and any receptacle or container in which such alcoholic beverages are found.

(F) "Director," the Director of the Revenue Department.

(G) "Distilled spirits," ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use containing not less than one-half of one percent of alcohol by volume.

(H) "Distiller" means any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any distillery or other establishment for the production, rectifying, blending, or bottling of intoxicating liquor other than beer.

(I) "Liquor," any alcoholic beverage.

(J) "Malt beverage," a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one-half of one percent of alcohol by volume, and commonly referred to as beer or ale.

(K) "Manufacturer," any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any facility which produces alcoholic beverages.

(L) "Off Sale," the sale of any alcoholic beverage for consumption off the premises where sold.

(M) "On Sale," the sale of any alcoholic beverage for consumption only upon the premises where sold.

(N) "On-Sale dealer," any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

(O) "Package" means the bottle or immediate container of any alcoholic beverage.

(P) "Package dealer," any person other than a distiller, manufacturer, or wholesale, who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold.

(Q) "Person," any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, business receiver, or any group or combination acting as a unit and the plural as well as the singular in number.

(R) "Retailer," or "retailer dealer" any person who sells alcoholic beverages for other than resale.

(S) "Retailer license," an on-or off license issued under the provisions of this Ordinance.

(T) "Revenue Department," the Cheyenne River Sioux Tribal Revenue Department.

(U) "Sale," the transfer, for a consideration, of title to any alcoholic beverage.

(V) "Solicitor," any person employed by a licensed wholesaler within or without the territorial limits of the Cheyenne River Indian Reservation, or by any distiller or manufacturer within or without the Reservation, who solicits orders of intoxicating liquor from wholesale or retail dealers within the Reservation.

(W) "Transportation company," or "transporter," any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverage destined to be delivered to the Cheyenne River Indian Reservation, but not including transportation by carriers in interstate commerce where the shipment originates outside of the state and is destined to a point outside of the state.

(X) "Treasurer," the duly elected and acting Treasurer of the Cheyenne River Sioux Tribe.

(Y) "Tribal Council," the governing body of the Cheyenne River Sioux Tribe.

(Z) "Wholesaler," any person who sells alcoholic beverages to retailers for resale.

(AA) "Wine," any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one-half of one percent of alcohol by volume but not more than twenty-four percent of alcohol by volume.

Section 3. Licensing Policies and Procedures

Section 3–1–1. Granting of License

Any person intending to introduce, sell, trade, transport or manufacture alcoholic beverages on the Cheyenne River Indian Reservation shall make application for a license and present the completed application to the Cheyenne River Sioux Revenue Department. The liquor license fees shall be in annual payments, due prior to the 1st day of January of each calendar year, for the following prescribed fees:

Section 3–1–2. Wholesale Licensing

The fee for an annual wholesale license shall be set by Tribal Council resolution at not less than Two Hundred Dollars ($200.00) and no more than Three Thousand Dollars ($3,000.00).

Section 3–1–3. Retail Licensing

The fee for an annual retail license shall be set by Tribal Council resolution

at not less than One Hundred Dollars ($100.00) and no more than Twenty-Five Hundred Dollars ($2,500.00).

Section 3–1–4. Transport Licensing

The fee for an annual transport license shall be set by Tribal Council resolution at not less than Two Hundred Dollars ($200.00) and no more than One Thousand, Five Hundred Dollars ($1,500.00).

Section 3–1–5. Operating of a Plant Distilling Intoxicating Liquor

The fee for an annual distilling plant shall be set by Tribal Council resolution at not less than One Thousand Dollars ($1,000.00) and no more than Five Thousand Dollars ($5,000.00).

Section 3–1–6. Solicitors

The fee for an annual solicitors license shall be set by Tribal Council resolution at not less than Two Hundred Dollars ($200.00) and no more than Seven Hundred Fifty Dollars ($750.00).

Section 3–1–7. Alcoholic Beverage Control Commission

There is hereby created a Cheyenne River Sioux Tribal Alcoholic Beverage Control Commission.

(A) The Alcoholic Beverage Control Commission shall consist of:

(1) A member of the Tribal Council Health Committee;

(2) A member of the Tribal Council Revenue Committee;

(3) A member of the Tribal Council Education Committee;

(4) A member of the Cheyenne River Sioux Tribal Police Commission; and

(5) A physician or other expert professionally trained in the area of alcohol abuse prevention and treatment.

(B) The Commissioner from the Tribal Council Health Committee shall chair the Alcoholic Beverage Control Commission. The Chairman shall preside at Commission hearings but shall not exercise his power to vote, except in the case of a tie.

(C) A quorum of the Commission shall consist of three members, and a quorum is required to exercise Commission authority.

(D) No Commission member shall participate in any Commission decision in which he has direct interest or in which any member of his immediate family has a direct interest.

Section 3–1–8. Powers of the Alcoholic Beverage Control Commission

Commissioners shall be appointed by the Tribal Council for terms of two years, and shall be removed only for cause, after notice and an opportunity for a hearing before the Tribal Council. When a vacancy occurs on the Commission, the Tribal Council shall appoint a new Commissioner for the balance of the term.

(A) The Alcoholic Beverage Control Commission shall have the power to:

(1) Review license applications and grant licenses;

(2) Conduct hearings on alleged violations of this Ordinance;

(3) Establish rules and regulations governing the conduct of the Commission and the exercise of Commission authority;

(4) Collect taxes, impose penalties, suspend and/or revoke licenses when violations of this Ordinance are proved by a preponderance of the evidence; and

(5) Enjoin violations of this Ordinance and enforce the orders of the Commission.

(B)(1) Taxes may be collected by the Commission through assessment and distraint or other necessary means;

(2) Penalties may be collected through the attachment, levy and sale of property or other necessary means;

(3) Orders suspending or revoking licenses or enjoining the operations of liquor dealers may be enforced by the Tribal Police acting at the direction of the Commission.

Section 3–1–9. Qualifications for License

No license shall be issued unless the applicant shall be twenty-one years of age, has filed a sworn application, accompanied by the required fee, showing the following qualifications and subject to the following standard:

(A) An applicant, other than a corporation, must be a legal resident of the United States and a person of good moral character. If the applicant is a corporation, partnership, joint venture, association, municipal corporation, estate, trust, business receiver or firm, the manager of the licensed premises must be a resident of the United States and a person of good moral character. Officers and directors of corporations, partners, and directors of corporations, and partners, joint venturers, principals of associations and municipal corporations, trustees, business receivers and members of firms must be legal residents of the United States and persons of good moral character. Applicants must also be licensed with the Cheyenne River Indian Reservation.

(B) The Alcoholic Beverage Control Commission may require the applicant to set forth such other information as is necessary to enable it to determine if a license should be granted.

(C) The Alcoholic Beverage Control Commission shall issue a license only if the qualifications set forth herein are satisfied and if it concludes, within its discretion, that the best interests of the Reservation community shall be served. In considering applications by retail dealers, the Alcoholic Beverage Control Commission may take into account the following factors, among others, in determining whether the issuance of a license will serve the best interests of the Reservation community:

(1) Whether the license applied for is for the operation of a new or an existing retail liquor establishment;

(2) Whether the applicant is in compliance with applicable tribal, state and federal law;

(3) Whether the applicant has violated any provision of this Ordinance, and if so, whether the violation has been remedied;

(4) The location, number and density of retail liquor establishments in the community;

(5) Whether food is sold at the establishment; and

(6) The health and welfare of the public.

Section 3–1–10. Public Comments

Before the issuance of any tribal liquor license, the Cheyenne River Sioux Tribe shall allow comments from the public. The Alcoholic Beverage Control Commission shall be the determining authority for the granting of any tribal liquor license.

Section 3–1–11. Appeal

Any applicant who is denied a license by the Alcoholic Beverage Control Commission may appeal the Commission's decision to deny the license to the Superior Court by filing a notice of appeal with the Court, clearly stating the grounds therefore, and serving a copy of the notice of appeal by hand on the Director of the Revenue Department within thirty (30) days from the date of the decision. The Superior Court shall uphold the decision of the Alcoholic Beverage Control Commission unless it finds that the Commission's decision was arbitrary and capricious, an abuse of discretion, or not in accordance with this Ordinance or other applicable tribal or federal law.

Section 4. Prohibitions

Section 4–1–1. General Prohibition

It shall be unlawful to introduce, manufacture for sale, sell, or offer or keep for sale or transport alcoholic beverages on the Cheyenne River Indian Reservation except upon the terms, conditions, limitations, and restrictions specified in this Ordinance. In addition to any other civil penalty provided for this Ordinance, each violation of this

section may subject the violator to a civil fine not to exceed $5,000.

Section 4–1–2. Disposal Prohibited on Certain Days

No licensee of any class shall sell intoxicating liquor on Sunday, Memorial Day and Christmas Day. No licensee of any class shall sell intoxicating liquor on Tribal election day while the polls are open. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation. The Alcoholic Beverage Control Commission may, in its discretion, waive this prohibition for a specified day.

Section 4–1–3. Disposal Prohibited During Certain Hours

No licensee shall sell or provide alcoholic beverages to any person on the licensed premises before eleven o'clock a.m. or after one o'clock a.m., Mondays through Thursdays; and no licensee shall sell or provide alcoholic beverages to any person on the licensed premises before eleven o'clock a.m. or after two o'clock a.m., Fridays through Saturdays. No off-sale dealer shall sell or provide alcoholic beverages to any person before eleven o'clock a.m. or after eleven o'clock p.m., Mondays through Thursdays, and no off-sale dealer shall sell or provide alcoholic beverages to any person before eleven o'clock a.m. or after twelve o'clock a.m. (midnight), Fridays through Saturdays. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

Section 4–1–4. Prohibition as to Persons Under Twenty-One Years of Age

No licensee of any class shall provide directly or by a clerk, agent or servant, intoxicating beverages to any person under the age of twenty-one years. In addition to any civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed $100 for each violation.

(A) In addition, any person who is injured as a result of a violation of this section shall have a right of action against the person who contributed to his injury by providing alcoholic beverages to a minor person. The Superior Court shall have jurisdiction to hear such actions.

(B) An action under subsection (A) of this section shall be commenced within 2 years after the damage, injury or death.

Section 4–1–5. Prohibition as to Provision to Intoxicated Persons

(A) No licensee of any class shall provide directly or by a clerk, agent or servant, alcoholic beverages to a visibly intoxicated person. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

(B) In addition, any person who is injured as a result of a violation of this section shall have a right of action against the person who contributed to his injury by providing alcoholic beverages to a visibly intoxicated person. The Superior Court shall have jurisdiction to hear such actions.

(C) An action under Subsection (B) of this section shall be commenced within 2 years after the damage, injury or death.

Section 4–1–6. Prohibition as to Provision to Pregnant Persons

No licensee of any class shall knowingly provide directly or by a clerk, agent or servant alcoholic beverages to any person who is pregnant. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

Section 4–1–7. Prohibition as to Purchase or Use by Pregnant Persons

No person shall purchase, obtain or use alcoholic beverages while pregnant. Any person who violates this section may be subject to a civil fine not to exceed $500. When there is serious danger of prenatal alcohol damage to the unborn child, the violator may be civilly committed to an alcohol abuse treatment facility for a period of time not to exceed the duration of the pregnancy by order of the Superior Court. The Superior Court shall, in determining such cases, follow the procedural rules provided by tribal law for involuntary civil commitments.

Section 4–1–8. Prohibition Against Cashing Subsistence Checks

No licensee of any class shall, directly or by clerk, agent or servant, knowingly cash or accept any General Assistance check issued by the Federal Government, any Aid to Families with Dependent Children check issued by the state government or any other government subsistence check. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

Section 4–1–9. Prohibition Against Drive-up Windows

No licensee shall sell or provide alcoholic beverages from a drive through window or entrance. In addition to any other civil penalty provided for in this Ordinance, any licensee who violates this section may be subject to a civil fine not to exceed $500 for each violation.

Section 5. Taxation

Section 5–1–1. Wholesale Alcoholic Beverage Excise Tax

There is hereby imposed a wholesale alcoholic beverage tax excise tax of 7.5% on the wholesale price of all alcoholic beverages introduced into the Cheyenne River Indian Reservation for sale or provision to a retail alcoholic beverage dealer.

Section 5–1–2. Delivery of Beverages for Resale Prohibited Except to Licensees

No manufacturer, wholesaler, or transporter shall sell or deliver any package containing alcoholic beverages manufactured or distributed by him for resale, unless the person to whom such package is sold or delivered is a licensed alcoholic beverage dealer. In addition to any other civil penalty provided for in this Ordinance, any person who violates this section may be subject to a civil fine not to exceed $250 for each violation.

Section 5–1–3. Retail Alcoholic Beverages Dealers to Purchase only from Licensed Wholesalers, Etc.

Retail alcoholic beverage dealers shall buy or receive alcoholic beverages *only* from wholesalers, solicitors or transporters licensed under this Ordinance. In addition to any other civil penalty provided for in this Ordinance, any person who violates this section may be subject to a civil fine not to exceed $250 for each violation.

Section 5–1–4. Monthly Return and Payment of Wholesale Alcoholic Beverage Excise Tax

Wholesalers and other alcoholic beverage dealers who introduce, or otherwise cause to be introduced, alcoholic beverages into the Cheyenne River Indian Reservation for provision to retail alcoholic beverages dealers shall be liable for payment of the wholesale alcoholic beverage excise tax and shall file monthly returns with the Revenue Department, on such forms as the department may require, showing the kind, quantity and price of the alcoholic beverages introduced, or otherwise caused to be introduced, into

the Cheyenne River Indian Reservation, along with the names of the persons to whom the alcoholic beverages were provided, the amount of the tax due and other information which the Revenue Department may reasonably require. Said return, covering the period of one calendar month, shall be transmitted to the department on or before the twenty-fifth day of the month following the close of the reporting period. The tax due for that period shall be remitted together with the monthly return.

Section 5–1–5. Records and Reports Required of Licensees—Entry and Examination on Default

Any person liable for the payment of the wholesale alcoholic beverage excise tax shall keep, in current and available form on the licensed premises, records of all purchases, sales, quantities on hand and such other information as the Director of the Revenue Department may reasonably require. The Director may require from any licensee any reports he or she shall prescribe, and he or she may require the production of any book, record, document, invoice, and voucher kept, maintained, received, or issued by any such licensee in connection with his business, which in the judgment of the Director may be necessary to administer and discharge his duties, to secure the maximum of revenue to be paid, and to carry out the provisions of law. If default is made, or if any such licensee fails or refuses to furnish any other reports or information referred to upon request therefor, the Director may enter the premises of such licensee where the records are kept and make such examination as is necessary to compile the required report. The cost of such examination shall be paid by the licensee whose reports are in default.

Section 5–1–6. Reports Required on Shipments of Beverages into Reservation

Any person outside the Reservation who sells or ships alcoholic beverages to a manufacturer, wholesaler, solicitor, transporter or retailer within this Reservation shall forthwith forward to the Director such a report as the Director shall require, giving the name and address of the licensee or person making the purchase, the quantity and kind of alcoholic beverages sold, the manner of delivery and such other information as the Director requires.

Section 5–1–7. Tax Stamps

The wholesaler alcoholic beverage excise tax shall be required to be evidenced by an identification stamp to be affixed to original packages of alcoholic beverages introduced into the Cheyenne River Indian Reservation. The Revenue Department shall adopt the design of the identification stamp, procure manufacture of the stamp, and shall issue rules regarding the issuance and use of the stamp.

Section 5–1–8. Counterfeiting of Stamps

Every person who shall make, manufacture, counterfeit, duplicate or in any other way imitate any identification stamp, provided for in section 5–1–4 above, or who shall possess or in any way use such counterfeit or imitated stamp, may be assessed a civil fine not to exceed $5,000 for each violation.

Section 5–1–9. Penalty and Interest on Delinquency in Payment of Tax—False Return—Collection of Tax and Penalties

If any person liable for the wholesale alcoholic beverage excise tax fails to pay the tax on the date payment is due, there shall be added to the tax ten percent of the amount of the tax unpaid. The amount of the tax and penalty shall bear interest at 1.5% per month from the date of delinquency until paid.

If any licensee files a false or fraudulent return, there shall be added to the tax an amount equal to the tax evaded, or attempted to be evaded. All such taxes and civil penalties may be collected by assessment and distraint.

Section 5–1–10. Possession of Unstamped Beverages Prohibited

No person may possess any alcoholic beverage other than in a package upon which the required tax stamps are affixed. In addition to forfeiture and any civil penalty provided for elsewhere in this Ordinance, each violation of this section shall subject the violator to a civil fine not to exceed $250.

Section 5–1–11. Luxury Tax on Retail Purchase of Alcoholic Beverages

There is hereby imposed a luxury tax of 10% on the retail sale price of alcoholic beverages purchased within the Cheyenne River Indian Reservation. This tax shall be levied and collected in addition to any tribal sales tax.

Section 5–1–12. Monthly Return, Collection and Remittance of Luxury Tax on Retail Purchase of Alcoholic Beverages

Retail alcoholic beverage dealers shall be liable for the collection and remittance of the luxury tax on the retail sale price of alcoholic beverages. Retail alcoholic beverage dealers shall keep accurate records of all sales of alcoholic beverages and shall file monthly returns with the Revenue Department, on such forms as the department may require, showing the quantity and the price of alcoholic beverages sold at retail, along with the amount of the tax due and other information which the department may reasonably require. Said return, covering the period of one calendar month, shall be transmitted to the department on or before the twenty-fifth day of the month following the close of the reporting period. The tax due for that period shall be remitted together with the monthly return.

Section 5–1–13. Reports Required of Retail Alcoholic Beverage Dealers

Retail Alcoholic Beverages Dealers shall keep, in current and available form on the licensed premises, records of all purchases, sales, quantities on hand and such other information as the Director of the Revenue Department may reasonably require. The Director may require from any licensee any reports he shall prescribe, and he may require the production of any book, record, document, invoice, and voucher kept, maintained, received, or issued by any such licensee in connection with his business, which in the judgment of the Director may be necessary to administer and discharge his duties, to secure the maximum of revenue to be paid, and to carry out the provisions of law. If default is made, or if any such licensee fails or refuses to furnish any other reports or information referred to upon request therefore, the Director may enter the premises of such licensee where the records are kept and make such examination as is necessary to compile the required report. The cost of such examination shall be paid by the licensee whose reports are in default.

Section 5–1–14. Penalty and Interest on Delinquency in Collection and Remittance of Tax—False Return—Collection of Tax and Penalties

If any person responsible for the collection and remittance of the luxury tax on retail alcoholic beverage sales fails to remit the tax on the date that payment is due, there shall be added to the amount of the tax due ten percent of the amount of the tax unpaid. The amount of the tax and penalty shall bear interest at the rate of 1.5% per month from the date of delinquency until paid. If any licensee files a false or fraudulent return, there shall be added to the tax an amount equal to the tax evaded, or attempted to be evaded. All such taxes and civil penalties may be collected by assessment and distraint.

Section 5–1–15. Tax Agreements Authorized

The Tribal Council finds that the public interest of residents of the

Reservation is best served by cooperation between the Tribe, the State of South Dakota and/or its subdivisions in the area of taxation of alcoholic beverages. Accordingly, the Tribal Council hereby authorizes the Revenue Department to negotiate tax collection agreements with the State and/or state subdivisions. Such agreements shall be submitted by the Revenue Department to the Tribal Council for approval before they are final.

Section 5–1–16. Dedication of Tax Revenue

All tax revenues collected pursuant to this Ordinance shall be dedicated to alcohol abuse education, enforcement, prevention, regulation and treatment.

Section 6. Penalties Imposed for Violations of Ordinance

Section 6–1–1. General Penalties

Anyone violating this Ordinance shall be subject to suspension or revocation of their tribal license.

Section 6–1–2. Hearing on Alleged Violations

Anyone having information that a person has violated any provisions of this Ordinance may file with the Revenue Department an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the Revenue Department may set the matter for a hearing before the Alcoholic Beverage Control Commission within 60 days. A copy of the affidavit and notice of hearing shall be mailed to the affected person by registered mail not less than five days before the hearing. A record of such hearings will be made by stenographic notes or by the use of an electronic recording device. The person shall have the right to be represented by counsel, question witnesses and examine the evidence against him or her as well as to present evidence and witnesses in his or her own defense.

Section 6–1–3. Suspension or Revocation of License

If after such hearing the Alcoholic Beverage Control Commission finds the violation set forth in the affidavit has been proved by preponderance of the evidence, an order shall be served on the licensee revoking or suspending the license for a period of time or imposing such other civil penalties as are provided for in this Ordinance. A decision of the Commission imposing civil fines or directing the payment of taxes may be automatically stayed by posting an appeal bond with the Superior Court in the amount of the fine imposed or taxes to be collected. A decision of the Commission revoking or suspending a license may be automatically stayed by posting a $10,000 appeal bond with the Superior Court.

Section 6–1–4. Powers of the Alcoholic Beverage Control Commission Chairman

The Chairman of the Alcoholic Beverage Control Commission, or his designee, at a hearing under this Ordinance shall have the power to administer oaths and to subpoena and examine witnesses.

Section 6–1–5. Appeal

Any person who is aggrieved by decision of the Alcoholic Beverage Control Commission suspending or revoking a license, imposing a civil penalty or collecting taxes imposed by this Ordinance may appeal the Commission's decision to the Superior Court by filing a notice of appeal, clearly stating the grounds therefor, and serving a copy of the notice of appeal by hand on the Director of the Revenue Department within thirty days from the date of the decision. The Superior Court shall uphold the decision of the Alcoholic Beverage Control Commission unless it finds that the Commission's decision was arbitrary and capricious or other applicable tribal or federal law. In the event that a decision imposing a civil penalty or ordering the collection of taxes is overturned on appeal, the Court may order the Commission to refund such penalty or taxes.

Section 7. Contraband

Section 7–1–1. Contraband Alcoholic Beverages—Containers—Forfeiture

The introduction of alcoholic beverages into, and possession, sale or use of alcoholic beverages within, the territory of the Cheyenne River Sioux Tribe contrary to tribal law is inimical to the public interest. All alcoholic beverages introduced into, or possessed, offered for sale or used within, the territory of the Cheyenne River Sioux Tribe contrary to tribal law, and any receptacle or container of any kind in which said alcoholic beverages are found, are hereby declared to be contraband. No property right shall exist in contraband alcoholic beverages or any receptacle or container wherein such alcoholic beverages are found. Contraband alcoholic beverages and any receptacle or container in which such alcoholic beverages are found are hereby declared forfeit and shall be seized forthwith.

Section 7–1–2. Seizure of Contraband Alcoholic Beverages—Containers—Search Warrant

When an officer of the Tribe has probable cause to believe that a person has contraband alcoholic beverages within the territory of the Tribe and a search warrant is required under tribal law or under the Federal Indian Civil Rights Act, 25 U.S.C. sec. 1301 *et. seq.*, he may apply to the Superior Court of the Tribe for a warrant to authorize the search of said person and any places, containers, conveyances, and receptacles, etc., which the officer has probable cause to believe contain said contraband alcoholic beverages. If the Superior Court determines that probable cause exists that a person has contraband alcoholic beverages within the territory of the Tribe, then the Court shall issue a search warrant describing the person, places and things to be searched and the things to be seized. The officer shall execute the search warrant and seize any and all contraband alcoholic beverages found and any receptacles and any containers in which said contraband alcoholic beverages are found. The officer shall turn the contraband over to the Revenue Department, which shall store the contraband for at least thirty days prior to disposition.

Section 7–1–3. Judicial Determination as to Nature of Alcoholic Beverages Seized

(A) Within ten calendar days after the seizure of any alcoholic beverages, or any receptacle or container in which said alcoholic beverages are found, on the grounds that they are contraband, any person claiming an interest therein may initiate an action for a determination as to whether the items seized are contraband by filing a claim with the Superior Court and serving notice of the claim on the Director of the Revenue Department. The Superior Court shall then schedule a hearing on the matter within fifteen calendar days after the filing of the claim.

(B) The Superior Court shall, upon good cause shown, permit discovery to be taken on an expedited basis. The Superior Court shall regulate the manner and timing of such discovery; provided that when the Superior Court orders expedited discovery, the time for a hearing may be postponed for a period of sixty (60) days. All discovery shall be completed prior to the hearing date.

(C) The Tribe shall have the burden to establish a prima facie case that items seized are contraband, and after such proof is made, the burden shall shift to the claimant to prove by a

preponderance of the evidence that the items seized are not contraband.

(D) If the Superior Court determines that the items seized by the Tribe are not contraband, the Court shall order the return of the items to the claimant after the time for filing an appeal has elapsed. If the Superior Court determines that the items seized are contraband, the Court shall declare the items to be contraband and the Tribe may dispose of the contraband as it deems fit after the time for filing an appeal has elapsed.

(E) The Tribe may appeal an adverse decision of the Superior Court under this section to the Appellate Court by filing a notice of appeal within ten calendar days of the date of the decision of the Superior Court. Filing of the notice of appeal by the Tribe shall automatically stay the decision of the Superior Court. The Appellate Court shall uphold the decision of the Superior Court unless it is clearly erroneous.

(F) The claimant may appeal an adverse decision of the Superior Court under this section to the Appellate Court by filing a notice of appeal within ten calendar days of the date of the decision of the Superior Court and posting an appeal bond in an amount set by the Superior Court. The Superior Court shall set the appeal bond in an amount sufficient to pay for the storage of the items in dispute during the pendency of the appeal and any court costs which may be incurred by the Tribe on the appeal. Filing of the notice of appeal by the claimant and payment of the appeal bond shall automatically stay the decision of the Superior Court. The Appellate Court shall uphold the decision of the Superior Court unless it is clearly erroneous.

Section 8. Exceptions

Section. 8–1–1. Exceptions to this Ordinance

The provisions of this Ordinance shall not apply to the sale of alcoholic beverages, or to ethanol, used or intended for use, for the following purposes:

(A) For scientific research or manufacturing products other than liquor;

(B) Medical use under the direction of a physician, medical or dental clinic, or hospital;

(C) In preparations not fit for human consumption such as cleaning compounds and toilet products, or flavoring extracts;

(D) By persons exempt from regulation in accordance with the laws of the United States; or

(E) For sacramental use such as wines delivered to priests, rabbis, and ministers.

Section 9. Miscellaneous Provisions

Section. 9–1–1. Agreement by Licensee to Grant Access for Inspection Purposes

Every licensee under this Ordinance, as a condition of the grant of a tribal license, consents to the inspection of his premises, including all buildings, safes, cabinets, lockers and storerooms thereon. Such inspection shall be available upon the demand of the Commission. These inspections shall be conducted by a duly appointed designee of the Commission, or tribal or federal police. All books and records dealing with the sale and ownership of alcoholic beverages shall be open for inspection purposes by the Commission.

Section. 9–1–2. Transferability

No license issued pursuant to this Ordinance shall be transferable; provided, however, upon death of an individual licensee, the personal representative of the estate may operate under a valid license for sixty (60) days after the licensee's death, so long as said personal representative shall apply to the Tribe for a new license within said sixty (60) day period.

Section. 9–1–3. Health Warnings

(A) The Health Department of the Cheyenne River Sioux Tribe shall create signs warning of the dangers faced by those who consume alcohol, including warning of the dangers to pregnant women, the dangers of drunk driving and such other warnings as the department shall deem necessary. The language in such signs shall be referred to the Indian Health Service for comments and shall be approved by a licensed physician prior to assurance. The Revenue Department shall issue copies of such signs in a conspicuous manner in close proximity to the area where alcohol is dispensed or sold.

(B) The Health Department of the Cheyenne River Sioux Tribe shall create pamphlets warning pregnant persons of the dangers of alcohol use during pregnancy. The language in such pamphlets shall be referred to the Indian Health Service for comments and shall be approved by a licensed physician prior to issuance. The Revenue Department shall issue copies of such pamphlets to all retail dealers. Each retail dealer shall offer one of these pamphlets to each pregnant person who is refused service pursuant to Sec. 4–1–5.

Section. 9–1–4. Server Training

Every person who serves alcoholic beverages on the premises of an on-sale license shall attend 8 hours of training in a server training program approved by the Alcoholic Beverage Control Commission on the latter of his or her 60th day of employment or within 60 days after the effective date of this Ordinance.

Section. 9–1–5. Tribal Sovereign Immunity

No provision of this Ordinance shall be construed to permit the recovery of money damages against the Tribe. No provision of this Ordinance shall be construed to waive the sovereign immunity of the Tribe, except as expressly provided in Sections 3–1–11, 6–1–5, and 7–1–3.

Section 10. Severability

Section. 10–1–1. Severability

If for any person, or circumstances, and provision(s) or section(s) of this Ordinance are held invalid by the appropriate court of jurisdiction, the remainder of this Ordinance and other provisions or sections shall not be affected in the application of the application of this Ordinance or to any person covered by this Ordinance.

Section 11. Effective Date of Ordinance No. 48 as Amended February 7, 1991

Section 11–1–1. Continued Operation Under Existing License

Ordinance No. 48 is hereby amended and said Ordinance is effective as amended sixty (60) days after its publication in the **Federal Register**. Any licensee operating under an existing tribal license may continue to operate thereunder until December 31, 1991, provided that the license complies with all of the provisions contained here, including the provisions relating to hours of operation, prohibited acts and taxation.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 92–11717 Filed 5–19–92; 8:45 am]

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federal register

Wednesday
May 20, 1992

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status; Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Endangered Status Determined for the Plan Clematis morefieldii (Morefield's Leather Flower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Clematis morefieldii* (Morefield's leather flower), to be an endangered species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Clematis morefieldii* is currently believed extant at only five sites in Madison County, Alabama. Three historical populations have been destroyed and two of the remaining sites are imminently threatened by residential development. The continued existence of this species is also jeopardized due to its limited range, small populations, and reduced vigor at sites which are excessively shaded. This action will extend the Act's protection to *Clematis morefieldii*.

EFFECTIVE DATE: June 19, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Jackson, Mississippi, Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Cary Norquist at the above address or telephone (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Clematis morefieldii is a perennial vine in the buttercup family (Ranunculaceae) and is a north Alabama endemic. It was first collected by Morefield in the early 1980's from Round Top Mountain in Madison County, Alabama, and later described by Kral (1987). This species is a member of the *Viornae* subsection of *Clematis*, which is noted for its narrow endemics (Kral 1987). *Clematis* in this subsection are distinguished by urn-shaped flowers which occur singly, or in few-flowered groups, in leaf axils. Their primary flower stalks (peduncles) are subtended by leafy bracts. *Clematis morefieldii* is closely related to *C. viorna*, a more variable species, but *C. morefieldii* has dense white hairs on the shoot, velvety lower leaf surfaces, and stouter, usually shorter (15-25 millimeters (mm) or 0.6 to 1.0 inch long) peduncles with sessile to nearly sessile bracts at the base (Kral 1987). *Clematis morefieldii* attains heights up to 5 meters (16 feet) and its compound leaves may attain lengths of 2 decimeters (8 inches). Leaves have 9 to 11 leaflets and the terminal 1 to 3 leaflets form tendrils. The flowers are pinkish and 20 to 25 mm (0.8 to 1.0 inch) long. Fruits are clusters of achenes. *Clematis morefieldii* flowers from late May to early July.

Extensive surveys have been conducted for *C. morefieldii*. Currently, it is known from only five locations in Madison County, Alabama. The vines are rooted in basic clay-loam soils in rocky limestone woods on the south and southwest facing slopes of mountains. Plants often sprawl over shrubs and boulders or climb understory shrubs. (Kral 1987). *Clematis morefieldii* occurs locally near seeps within a juniper-hardwoods community with *Cotinus obovatus* (smoketree) as the principal indicator species. Other associate hardwoods include *Carya ovata*, oaks (*Quercus shumardii, Q. muhlenbergia, Q. alba, Q. stellata*), *Ulmus*, and *Fraxinus americana*.

Four of the five populations are within 0.3 to 1.7 kilometers (km) (0.2 to 1.1 miles) of one another on the Huntsville—Monte Sano Mountain complex. A single vine is one site, two sites have approximately 20 plants, and the fourth site has several hundred vines. The fifth site (on Keel Mountain) is disjunct, approximately 8 km (6 miles) from the other sites, and has an estimated 300 vines. On all sites, the plants are clustered within a small area (0.1 hectare (0.25 acre) or less) (Weber 1991). Two populations are located on public land currently owned by the City of Hunstville. The other sites are on private property.

Of the total eight reported populations (including historic and extant sites), three populations are believed to have been destroyed, and two of the remaining five extant sites are imminently threatened by residential development. The continued existence of this species is also jeopardized due to its limited range, small populations, and reduced vigor at sites that are heavily shaded. Management may be necessary to maintain appropriate habitat.

Federal actions involving *Clematis morefieldii* began with field surveys in 1989, after the Service had been alerted to a newly described species of *Clematis* which appeared to be rare and facing imminent threats. In the February 21, 1990, publication of a notice of review for native plants in the **Federal Register** (50 FR 6184), *Clematis morefieldii* was included as a category 2 species (the specific name was misspelled in the notice). Category 2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule. The Service contracted for additional surveys in 1990 to further assess this species' rarity and threats to its existence. The contractor submitted a final report on this species' status in 1991. This report (Weber 1991) and other information supported the proposed listing. The data demonstrated a limited distribution and continuing threats to the species. On October 21, 1991, the Service published a proposal (56 FR 52503) to list *Clematis morefieldii* as an endangered species.

Summary of Comments and Recommendations

In the October 21, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice, inviting public comment, was published in the *Huntsville News*, Huntsville, Alabama, on November 9, 1991.

Four written responses to the proposed rule were received, including two from private individuals, one from a private conservation organization (Center for Plant Conservation), and one from a Federal agency (Tennessee Valley Authority). The Federal agency requested site specific information, without expressing an opinion on the proposed rule. The individuals and the Center for Plant Conservation (CPC) supported the proposal. The CPC additionally expressed their interest in assisting in recovery activities for this species. One of the individuals stated that further destruction had occurred at several of the sites.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Clematis morefieldii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C.

1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Clematis morefieldii* Kral (Morefield's leather flower) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

This species' range is currently recognized as limited to five sites in northern Alabama, all in Madison County. While surveying potential habitat for additional populations, it was noted that residential development had destroyed or adversely modified similar habitats. Residential development on mountains in the Huntsville area is increasing. Two of the existing populations are imminently threatened due to their precarious location on lots in a residential area. Clearing has already impacted habitat and individuals on these sites. Destruction of these two sites would result in approximately a 55 percent loss of total known individuals. At this time, only two of the five sites (22 and 300 plants, respectively) appear to be secure. Within the last few years, three populations have been destroyed by road building, clearing, and herbicide use associated with residential development (Weber 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

This recently discovered species is currently not known to be a significant component of the commercial wildflower trade; however, it is attractive and has horticultural potential. Publicity from its listing could generate an increased demand. Taking and vandalism pose threats because of its visibility when flowering and the accessibility of many of the sites. Over-collecting for any purposes could extirpate populations, especially at sites with only a few plants.

C. Disease or Predation

Seed predation by insects was noted in several populations (Weber 1991) and requires further investigation.

D. The Inadequacy of Existing Regulatory Mechanisms

Although it is considered endangered in Alabama (Gunn, Alabama Heritage Program, pers. comm., 1991), there are no State or Federal laws protecting *Clematis morefieldii* or its habitat. Two populations (totalling less than 25 plants) occur on public land (City of Huntsville) and are currently protected. However, ownership, thus protection, for one of these sites is tenuous. There is a possibility that public ownership will revert to private landowners if sufficient funds are not available to complete payment (Weber 1991). The Act will strengthen existing protection, provide additional protection and encourage active management for *Clematis morefieldii* when it is added to the Federal list of endangered and threatened species (see "Available Conservation Measures").

E. Other Natural or Manmade Factors Affecting its Continued Existence

This species is extremely vulnerable because it has a limited range and low numbers of plants at many of the sites. One population has one plant, two have approximately 20 plants, and all sites occupy less than an acre in area. A single unnatural or natural disturbance could destroy a significant percentage of the known populations. In addition, the small number of individuals at three sites may indicate a limited gene pool and, without infusion of gene flow, it is questionable if these smaller populations can survive.

Clematis morefieldii appears to have restricted ecological requirements. Plants are locally distributed and seem to require areas where shale seeps are moist for a good part of the year (Weber 1991). One population, located under a closed canopy, appeared to be stressed. Individuals were smaller and fewer flowers were observed, when compared to populations where the canopy was somewhat "open". This species may require habitat management to curtail succession.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Clematis morefieldii* as endangered. Endangered status is appropriate due to the species' restricted range and imminent threats facing several populations. An endangered species, as defined by the Act, is threatened with extinction throughout all or a significant portion of its range. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is presently not prudent for this species. This recently discovered *Clematis* occurs in limited numbers at only five locations; three of which are easily accessible. Publication of critical habitat maps in the **Federal Register** and local newspapers would increase public interest and possibly lead to additional threats for this attractive species.

Take is regulated by the Act with respect to endangered plants only in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. However, the known populations of *Clematis morefieldii* are located only on private and city land. Although the species is considered to be endangered in the State, there are no State laws which provide protection from collecting or vandalism. While listing under the Act increases the public's awareness of the species' plight, it can also increase the desirability of a species to collectors. As stated previously, this *Clematis* is an attractive vine which may be desirable to the wildflower trade or novelty collectors. Discovery and elimination of even one population would compromise the survival of the species. It also could be adversely affected by increased visits to, and associated trampling of, occupied sites as a result of critical habitat designation.

As discussed above, it is not now prudent to determine critical habitat for *Clematis morefieldii*. All involved parties, including appropriate City and State agencies, and key private landowners, have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species

Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All presently known populations are on private or city-owned land. The only currently known activity to be authorized, funded, or carried out by a Federal agency that would affect *Clematis morefieldii* is consideration of this species by the Environmental Protection Agency relative to pesticide (herbicide) registration.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Kral, R. 1987. A new "Viorna" *Clematis* from northern Alabama. Ann. Missouri Bot. Gard. 74:665–669.

Weber, S.F. 1991. Status report on *Clematis morefieldii*. Unpublished report to U.S. Fish and Wildlife Service, Southeast Region, Jackson, Mississippi. 10 pp. + appendix.

Author

The primary author of this rule is Cary Norquist (see **ADDRESSES** section), 601/965–4900 or FTS 490–4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Ranunculaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Ranunculaceae—Buttercup family:						
*	*	*	*	*	*	*
Clematis morefieldii	Morefield's leather flower	U.S.A. (AL)	E	468	NA	NA
*	*	*	*	*	*	*

Dated: May 4, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–11826 Filed 5–19–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Mitchell's Satyr Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Mitchell's satyre butterfly (*Neonympha mitchellii mitchellii*) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973,

as amended (16 U.S.C. 1531 *et seq*). Collecting pressure on this butterfly has resulted in the loss of several populations and is believed to immediately threaten the survival of several more populations. Human-caused degradation and destruction of the species' habitat has also substantialy reduced the number of sites occupied by this butterfly. Due to the need to immediately decrease collection of the species by protecting it under the Act, the Service exercised its emergency listing authority on June 25, 1991, by publishing an emergency rule which gave this species immediate and temporary endangered status and the resulting protection under the Act. The emergency rule provided Federal Protection for 240 days during which the Service initiated the normal listing procees to ensure long-term protection for the species. This rule provides the long-term protection that the Service believes is necessary to ensure the continued existence of the butterfly. This rule does not include the North Carolina subspecies, *N. m. francisci*, which may be extinct.

EFFECTIVE DATE: May 20, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Twin Cities Regional Office, U.S. Fish and Wildlife Service, Division of Endangered Species, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Craig Johnson, Chief, Division of Endangered Species, at the above address (telephone 612/725–3276 or FTS 725–3276).

SUPPLEMENTARY INFORMATION

Background

N. m. mitchellii is the nominate subspecies of one of two North American species of *Neonympha*. It was described by French in 1889 from a series of ten specimens collected by J. N. Mitchell in Cass County, Michigan (French 1889). It is a member of the family Nymphalidae (over 6,400 species worldwide), subfamily Satyrinae (estimated 2,400 species).

(The Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife * * *" (section 4.(15)). Therefore, although taxonomically recognized as a subspecies, *N. m. mitchellii* will be referred to as a "species" throughout the remainder of this rule. This legal, as opposed to biological, use of the term "species" should not be understood to mean that this rule covers the entire species *Neonympha mitchellii*. This rule covers only the northern subspecies *N. m. mitchellii*, and does not include the North Carolina subspecies *N. m. francisci*.

Mitchell's satyr is a medium sized (38–44 millimeter wingspan) butterfly with an overall rich brown coloration. A distinctive series of submarginal yellow-ringed black circular eyespots (ocelli) with silvery centers are found on the lower surfaces of both pairs of wings. The number of ocelli on the forewing varies between the sexes, with males generally having 4 (range 2–4) and females having 6 (range 5–6). The eyespots are accented by two orange bands along the posterior wing edges, as well as two fainter orange bands across the central portion of each wing. It is distinguishable from its North American congener *N. areolata* by the latter's well-marked ocelli on the upper wing surfaces, as well as the lighter coloration and stronger flight of *N. areolata* (French 1889; McAlpine et al 1960; Wilsmann and Schweitzer 1991).

N. m. mitchellii is one of the most geographically restricted butterflies in North America. Historical records exist for approximately 30 locations in four States, ranging from southern Michigan, adjacent counties of northern Indiana, and a single Ohio county, with several disjunct populations in New Jersey. The species has been documented from a total of 18 counties (Badger 1958; Martin 1987; Pallister 1927; Rutkowski 1968; Shuey et al 1987b; Wilsmann and Schweitzer 1991).

A second *Neonympha mitchellii* subspecies was discovered at Ft. Bragg, North Carolina in 1983 (Parshall and Kral 1989). This subspecies, *N. m. francisci*, is only known from that single site, and may have been collected to extinction since its discovery. Although additional suitable habitat probably exists on, and adjacent to, Ft. Bragg, no additional populations have been discovered (Schweitzer 1989). This rule does not include *N. m. francisci*.

Although *N. m. mitchellii* has been reported from Maryland, the lack of suitable habitat makes it more likely that those 1940's specimens were misidentified members of a *Neonympha areolatus* subspecies. Suitable habitat may exist in New York, Connecticut, Massachusetts, and Pennsylvania. However, searches in these States have failed to locate any *N. m. mitchellii* populations (Schweitzer 1989; Wilsmann and Schweitzer 1991).

The habitat occupied by *N. m. mitchellii* consists solely of wetlands known as fens. This is an uncommon wetland habitat type characterized by calcareous soils and fed by carbonate-rich water from seeps and springs. Fens are most frequently components of larger wetland complexes. Due to the superficial resemblance of fens to bogs, the habitat of Mitchell's satyr has sometimes been erroneously described in earlier literature as acid bogs (McAlpine et al 1960; Shuey 1985; Shuey et al 1987a; Wilsmann and Schweitzer 1991).

From 1985 through 1990 the Service sponsored intensive searches of over 100 sites that had suitable habitat for the species throughout its known range. The sites visited were either known historical locations for the species, or were chosen because of the presence of a fen. All historical locations were checked if they could be relocated and if the fen habitat still existed. Survey results indicated the species occurred at only 16 sites, of which two were not historically known, and one was subsequently destroyed by over-collection. Therefore, the species has disappeared from approximately one-half of its historical locations. No extant populations have been found in Ohio, and the only New Jersey population that remained in 1985 is believed to have been extirpated by collectors subsequent to the survey. In 1991, searches in New Jersey failed to locate any additional populations (Breden, New Jersey Natural Heritage Program, 1991, pers. comm.). Thus, the species is currently believed to exist in nine counties in Indiana and Michigan. Due to the extent of these and other recent surveys, finding additional sites is unlikely, although survey efforts will be continued.

A letter from Charles L. Remington, dated November 19, 1974, asked the Service to protect *N. m. mitchellii* (letter from Charles L. Remington to Dr. Paul A. Opler, U.S. Fish and Wildlife Service, dated November 19, 1974). That letter was treated as a petition to list the species as threatened or endangered. The Service subsequently found (49 FR 2485, January 20, 1984) that insufficient data was available to support listing at that time. The Service's May 1984, Animal Notice of Review (49 FR 21664–21675) listed *Neonympha mitchellii* as a category 3C species, indicating that at that time the species was believed to be

too abundant for consideration for addition to the endangered and threatened species lists. In a subsequent January 6, 1989, Animal Notice of Review (54 FR 554–579) the species was upgraded to a category 2 candidate for listing, indicating renewed concern for the species' welfare and encouraging further studies into the status of the species. The most recent status survey indicates that the species has experienced significant range reduction and should receive the protection of the Act (Wilsmann and Schweitzer 1991). The Service analyzed the status survey and determined that the species should be protected from over-collection by an emergency listing as an endangered species. The emergency listing was published, and became effective, on June 25, 1991 (56 FR 28825–828), and provided protection under the Act until February 20, 1992.

Summary of Comments and Recommendations

In the September 11, 1991, proposed rule, as well as in the December 3, 1991, notice reopening the comment period, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, landowners, and other interested parties were contacted and requested to comment. Newspaper notices were published in 18 papers across the four-state historical range of the species during the period October 11 through October 23, 1991, inviting public comment. Forty-two comments were received and are discussed below. These comments came from the state conservation agencies of the four states with historical sites for the species, one Michigan county commission, a Michigan wetland preservation organization, three professional and amateur lepidopterists, and 32 private citizens. The private citizen letters included 2 from the owners of two Michigan sites currently occupied by the species, and 25 letters from elementary students who live in the vicinity of one of the extant Indiana sites. One commenter opposed the listing; all other commenters supported the listing.

Letters supporting the Federal listing of the species were received from the four state conservation agencies within its historic range. A letter from an amateur entomologist responding for the Barry County Board of Commissioners supported the listing and offered assistance in conservation measures. A letter with 12 signatures from the Wetland Conservation Association, located in Berrien County, Michigan, urged the Service to list the species and expressed concern over potential adverse impacts to the species from a proposal to realign U.S. Highway 31. All 32 letters from private citizens supported the listing.

Professional and amateur lepidopterists sent three letters containing additional data and scientific comments. Two of these letters expressed strong support for Federal protection for the species, while the third letter strongly opposed Federal listing as endangered. Both supporting letters (from Dr. Dale Schweitzer, The Nature Conservancy, and John C. Calhoun, Southern Leipidopterists' Society) stressed the need for additional surveys for *N. m. francisci* before the Service assumes it to be extinct. Accordingly, the wording of this final rule has been adjusted to recognize that *N. m. francisci* might be extinct, but that additional surveys are waranted before that conclusion is final. The service is funding additional surveys in North Carolina for *M. m. francisci* in the hope that extant populations can be located.

Mr. Calhoun stated the likelihood of a second historical population in Ohio at a site that has experienced habitat destruction. He also pointed out severe adverse impacts from intensive collecting at one Michigan site that previously had a "very strong" Mitchell's satyr population.

The sole letter opposing the Federal listing of *N. m. mitchellii* as an endangered species was submitted by Mr. Mogens Nielsen. Mr. Nielsen's letter contained a number of assertions that fall into four categories; the species is not declining, collection is not a threat, the 1985–90 searches were inadequate, and Federal listings as endangered will curtail further surveys and research on the species. These points are discussed individually below.

Mr. Nielsen describes personal observations made at the type locality for the species over a 34-year period. He states that he never detected any significant population change at that site. He did not describe his observation methods, nor submit any data supporting his assertion. Thus, the Service is unable to evaluate this comment regarding population trends for one of the extant populations. However, the service believes that the documented loss of one-half of the known historical populations is sufficient reason for listing the species even if the population is stable at one or more of the individual sites.

The Service has received numerous accounts, including a 1991 report from Service law enforcement personnel, describing evidence of probable collection activity at *N. m. mitchellii* sites. The Service also has reports of incidents of earlier collections that many knowledgeable lepidopterists accept as factual. The Service remains confident that *N. m. mitchellii* is threatened by collection pressure despite the absence of successful court prosecutions of collectors.

The Service disagrees with Mr. Nielsen's characterization of the recent rangewide surveys, and believes the 1985–1990 searches for *N. m. mitchellii* provided an accurate index of the status of the species. Although not all fens were checked, those fens judged to be of moderate to high habitat quality were checked, and all existing and locatable fens with historical occurrences of the species were checked. The surveys focussed on the most likely sites for the species, yet *N. m. mitchellii* was found at only 16 of the 103 sites surveyed, with one of those subsequently being eliminated by over-collection. While the Service recognizes that additional populations might be found, these are likely to be at sites with lower quality habitat and low population levels. The findings of a few such sites will do little to alter the probability of extinction for *N. m. mitchellii.*

The Service recognizes and appreciates the contributions made by lepidopterists in obtaining data on rare species occurrences and population trends. Subsequent to this listing the Service intends to allow research and survey activities on *N. m. mitchellii* to continue if they will promote the conservation of the species. Permits for such activities will be available from the Service. Federal listing as endangered will curtail only detrimental research and other activities.

In addition to these comments, a January 6, 1992, phone inquiry was received from the office of Congressman Gallo (NJ), asking if the Service has any firm plans for site preservation in New Jersey. Site preservation activities, as well as other recovery actions, will be recommended by a recovery plan to be developed by experts on the species. There currently are no site-specific preservation plans.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *N. m. mitchellii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531

et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *N. m. mitchellii* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Fen habitat is being destroyed and degraded by human activities and by natural succession. Human-induced destruction of historical sites has been documented in at least three cases. One Michigan site has been destroyed by urban development. Sites in Michigan and Ohio have been lost by conversion to agriculture. Another extant population in Michigan has had a portion of its habitat destroyed by hog farming activities and all terrain vehicle use. These activities constitute ongoing threats to other sites with extant populations of *N. m. mitchellii* (Shuey et al 1987a; Schweitzer 1989; Martin 1987; Wilsmann and Schweitzer 1991).

One Michigan site is bisected by a highway which is scheduled for realignment. Mitchell's satyr habitat will be destroyed or degraded by the project as originally designed. Consultation under section 7 of the Act is underway among Service, Michigan Department of Transportation, and Federal Highway Administration officials to have the plans modified to diminish or eliminate adverse effects on the species.

Although natural succession in fens is not completely understood, it appears that human activities adjacent to a fen can speed succession and subsequent loss of Mitchell's satyr habitat. For example, nearby drainage ditches may alter the hydrologic regime of a fen, resulting in lowered water levels, more xeric soil conditions, and increased invasion of brush and trees into the fen. There is evidence that this is occurring at one Michigan site (Wilsmann, Michigan Natural Features Inventory, 1991, pers. comm.).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Mitchell's satyr has long been sought by butterfly collectors and there is evidence that collection of the species has continued despite its endangered or threatened classifications under Michigan, Indiana, and New Jersey rare species laws. Subsequent to the 1985 survey of New Jersey fens, it is believed that the State's last remaining *N. m. mitchellii* population was eliminated by collectors. A collector's glassine envelope was found at the site during one survey. Another New Jersey *N. m. mitchellii* site, which was well known to butterfly collectors, was extirpated in the 1970's by over-collection. The other subspecies of *Neonympha mitchellii, N. m. francisci*, is believed to have been collected to extinction at its only known location (Wilsmann and Schweitzer 1991; Breden 1991, pers. comm.; Schweitzer, The Nature Conservancy, 1991, pers. comm.).

Well-worn human paths have been seen at the sites of several extant populations in Michigan during status surveys and law enforcement activities over the last few years. These paths wind through *N. m. mitchellii* habitat in the manner that would be expected of knowledgeable collectors and are viewed as evidence that collecting is continuing, despite the species being listed and protected by State statute. Subsequent to the June 25, 1991, emergency listing, several butterfly collectors were encountered by Service Law Enforcement personnel at one well known Michigan site—fresh trails through prime Mitchell's satyr habitat were seen at nearly every other site being patrolled. At least five Michigan sites are sufficiently well known to collectors and/or have sufficiently small Mitchell's satyr populations to be extremely vulnerable to local extinction from overcollection (Wilsmann 1991, pers. comm.). All known *N. m. mitchellii* sites are believed vulnerable to local extinction by overcollection (Schweitzer 1991, pers. comm.).

C. Disease or Predation

Little is known about these factors, but there are no indications at this time that they might be contributing to the decline of *N. m. mitchellii*.

D. The Inadequacy of Existing Regulatory Mechanisms

N. m. mitchellii is currently listed under State statutes as endangered in Indiana, Michigan, and New Jersey, and extirpated in Ohio.

Endangered status in Michigan prohibits the collection of the species without a Michigan scientific collection permit. However, the threat of State prosecution apparently has not ended collectors' illegal activities. Michigan Department of Natural Resources officials believe the threat of Federal prosecution will be a more effective deterrent (Weise, Michigan Department of Natural Resources, Endangered Species Program, 1991, pers. comm.; Wilsmann 1991, pers. comm.).

Endangered status in Indiana provides official recognition of species' rarity, but the State's endangered species regulations do not prohibit taking listed insects unless they are also on the Federal endangered and threatened species list. Thus, the State classification provides no effective legal deterrent to continued collection. The ability to legally collect the species under Indiana statutes makes the species a target for heavy collecting pressure and possible extirpation in that State (Bacone, Indiana Natural Features Inventory, 1991, pers. comm.).

New Jersey regulations provide total protection for any *N. m. mitchellii* that may be rediscovered within the State (Frier-Murza, New Jersey Endangered Species Program, 1991, pers. comm.). The Ohio classification of extirpated provides no legal protection. However, if the species is rediscovered in the State, an emergency order can be invoked to list it as endangered and grant it full protection under State statutes (Case, Ohio Department of Natural Resources, Division of Wildlife, 1991, pers. comm.).

E. Other Natural or Manmade Factors Affecting its Continued Existence

N. m. mitchellii has only a single flight period annually, which lasts approximately two weeks for an individual, and for about three weeks for a population as a whole. It exhibits relatively sedentary behavior and slow, very low level flights. Due to these characteristics the species seems to have a limited ability to colonize new habitat patches, to recolonize historical sites, or to provide significant gene flow among extant populations. Therefore, the isolation of small populations makes them susceptible to local extinction if habitat degradation and/or collection pressure are also occurring (Wilsmann and Schweitzer 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this final rule. Based on this evaluation, the preferred action is to list *N. m. mitchellii* as endangered. The species has experienced a severe decrease in the number of extant populations over its historical range, as well as probable extirpation from two of the four States with historical populations. Due to its continuing appeal to a segment of butterfly collectors, as well as its narrow and well known habitat requirements, approximately one-third of the remaining populations are extremely vulnerable to overcollection and local extinction, and all populations are believed susceptible to collection-induced extirpation.

The Service concluded that conducting the normal listing process would not have protected the species until after the 1991 Mitchell's satyr flight period, thus subjecting the species to an additional year of excessive collecting pressure. Overcollection of one or more populations during the 1991 flight period might have severely reduced the likelihood of species survival. Therefore, the Service listed the species as endangered on an emergency basis to provide maximum protection to all known populations during the 1991 flight period. At this time the Service is concluding the normal listing process by determining the species to be endangered.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the Summary of Factors Affecting the Species, *N. m. mitchellii* is threatened by illegal collecting. Publication of critical habitat descriptions and maps would make this species more vulnerable to collection, would increase the difficulty of protecting the species from illegal take, and significantly increase the likelihood of extinction. All involved parties and most landowners already have been notified of species locations and the importance of protecting this species' habitat. Habitat protection will be addressed through the recovery process, including individual landowner contacts, through the section 7 jeopardy standard, and section 9 prohibitions.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The primary author for this proposed rule is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Division of Endangered Species, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Insects" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects:							
*	*	*	*	*	*	*	
Satyr, Mitchell's	Neonympha mitchellii chellii.	U.S.A. (IN, MI, NJ, OH)	NA	E	428E, 469	NA	NA
*	*	*	*	*	*	*	

Dated: May 6, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–11827 Filed 5–19–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Sensitive Joint-Vetch (Aeschynomene virginica)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: *Aeschynomene virginica* is an annual legume that can grow up to six feet tall and has yellow, pea-type flowers growing in racemes on short lateral branches. It requires the unique growing conditions occurring along segments of river systems that are close enough to the coast to be influenced by tidal action, yet far enough upstream to consist of fresh or slightly brackish water. The present distribution of *A. virginica* includes New Jersey (two occurrences), Maryland (one occurrence), Virginia (six occurrences) and North Carolina (three marginal occurrences). The joint-vetch has been extirpated from Pennsylvania and Delaware. Habitat alteration is the primary threat to the species' continued existence. Many of the sites where the species occurred historically have been dredged, filled, or bulkheaded. Extant sites are potentially threatened by a proposed highway expansion and a proposed electricity generating plant in New Jersey, by several proposed residential developments and water supply projects in Virginia, as well as by other factors related to increased population growth, including road construction, commercial development, water pollution, and bank erosion from motorboat traffic.

EFFECTIVE DATE: June 19, 1992.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours, at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, MD 21401.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Jacobs at the above address, telephone (410) 269–5448, during normal business hours.

SUPPLEMENTARY INFORMATION:

Background

A rare and specialized ecological community type occurs a short distance upstream of where certain rivers in the coastal plain of the eastern United States meet the sea. Referred to as freshwater tidal marshes, these communities are close enough to the coast to be influenced by tidal fluctuations, yet far enough upstream to consist of fresh or only slightly brackish water. Plants that grow in this environment are subjected to a cycle of twice-daily flooding tha most plants cannot tolerate. The sensitive joint-vetch (*Aeschynomene virginica*) is a plant of such freshwater tidal communities.

A. virginica is an annual legume (family Fabaceae) that attains a height of 1 to 2 meters (3–6 feet) in a single growing season. The stems are single, sometimes branching near the top. Leaves are even-pinnate, 2–12 centimeters (0.8–4.8 inches) long, with entire, gland-dotted leaflets. The irregular, legume-type flowers are about 1 cm (0.4 inch) across, yellow, streaked with red, and grow in racemes (elongated inflorescences with stalked flowers). The fruit is a loment with 6–10 segments, turning dark brown when ripe. Flowering begins in late July and continues through September. Fruits are produced from July to frost. Some observations indicate that seedlings may germinate only in "flotsam" (plant material) that has been deposited on the riverbank (Bruederle and Davison 1984).

Aeschynomene virginica has been confused with other members of the genus, particularly *A. indica*, which is an introduced, weedy species, common in wet agricultural areas from North Carolina to Florida, west to Texas and Arkansas. Another introduced member of this genus, *A. rudis*, has also been confused with *A. virginica*. This confusion has resulted in references to *virginica* in numerous weed science publications (e.g., Boyette *et al.* 1979; Hackett and Murray 1986). The picture was clarified by Carulli and Fairbrothers (1988), who showed the three species to be distinguishable based on electrophoretic analysis of allozyme variation. Previous studies had also indicated the morphological distinctiveness of *A virginica*. In her monograph of the genus, Rudd (1955) distinguishes *A. virginica* from *A. indica* based on the sizes of the fruit stipes and the flowers. Numerous other authors, including Fernald (1939), Gleason and Cronquist (1963), and Radford *et al.* (1964) have recognized the taxonomic validity of *A. virginica*. The recently published *Vascular Flora of the Southeastern United States: Volume 3* (Isley 1990) clearly distinguishes these three species of *Aeschynomene*.

At present, the sensitive joint-vetch is extant in New Jersey, Maryland, Virginia, and North Carolina. The plant's status in North Carolina merits special comment. During the mid-1980's, status survey work in North Carolina (Leonard 1985) revealed that the species was no longer extant at any of the five historic localities. Potential visible causes of population loss included

commercial and housing developments, realignment of a highway, habitat conversion to a public beach, and competition from weedy species. In the course of survey work, six new occurrences of *A. virginica* were found, two in or adjacent to cornfields and the remainder in roadside ditches. These new populations, inhabitat atypical for the species, have not proven to be stable. Three disappeared the year following their discovery, and another population has since disappeared. An additional small population was discovered in 1991. Thus, *A. virginica* is presently known to be extant in North Carolina only in three locations—two ditches connected to Lake Mattamuskeet, in Hyde County, and a ditch in Beaufort County. These populations are all apparently unstable, and the outlook for their long-term survival is not good. Intensive fieldwork in North Carolina's fresh tidal marshes in the areas of Albemarle and Pamlico Sounds during 1989 and 1990 revealed no new joint-vetch populations. These areas represented most of the best potential habitat for *A. virginica* in the State, and it is therefore unlikely that any additional significant joint-vetch populations will be found in North Carolina.

The currently known distribution of the species is as follows: New Jersey: One small occurrent (± 50 individuals) on the Wading River in Burlington County and one large occurrence (± 2000) on the Manumuskin River in Cumberland County. The latter site, representing one of the few remaining examples of pristine freshwater tidal marsh habitat in the State and containing the largest known viable *Aeschynomene virginica* population, has been acquired by The Nature Conservancy. New Jersey historic records for *A. virginica* occur in Atlantic, Camden, Cape May, and Salem Counties. Additional potential habitat along the Mullica and Maurice River systems remains to be checked for the species' presence. Maryland: One occurrence of several hundred individuals on Manokin Creek, in Somerset County; historic records from Anne Arundel, Calvert, Charles, Prince Georges, and Wicomico Counties. All historic sites have been recently field-checked. North Carolina: As stated above, in the summer of 1991 *A. virginica* was known to occur in two ditches in Hyde County and one ditch in Beaufort County. The plant also occurred historically in Craven County. Virginia: This is the stronghold of the species' current distribution. Wide annual fluctuations make estimations difficult, but it is believed that the total number of plants in the State is in the vicinity of 5000. It occurs along six river systems, as follows: (1) An occurrence of about 50 individuals along the Potomac River in Stafford County; (2) an extensive occurrence consisting of seven sub-populations along approximately 25 miles of the Rappahannock River in King George, Essex, Richmond, and Westmoreland Counties; (3) a large occurrence consisting of five sub-populations along an approximate 15-mile stretch of the Mattaponi River, a tributary of the York in King and Queen and King William Counties; (4) five sub-populations along a 15-mile section of the Pamunkey River, another tributary of the York (King William and New Kent Counties); (5) an occurrence of about 50 plants on the Chickahominy River, a tributary of the James River, in Charles City and James City Counties; and (6) a tiny occurrence of some eight plants along the mainstem of the James River, in Charles City County. The species is apparently extirpated from its type locality further downstream on the Rappahannock in Middlesex County. Historic records also exist for Prince George and Surry Counties, along the James River. The historic range of the species also included Delaware, (New Castle County), where it was last observed in 1899, and Pennsylvania (Delaware County), where it was last seen in 1891.

Federal government actions on this species began on December 15, 1980, when the Service published in the Federal Register a revised Notice of Review for Native Plants (45 FR 82480). *Aeschynomene virginica* was included in that notice as Category 2 species. Category 2 includes those taxa for which proposing to list as endangered or threatened species is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed rules. On November 28, 1983, the Service published in the Federal Register a supplement to the Notice of Review for Native Plants (48 FR 53640); updated plant notices have been published on September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184). *A. virginica* was included in these revisions as a Category 2 species.

In 1985 the Service contracted with The Nature Conservancy's Eastern Regional Office to conduct status survey work on *A. virginica* and several other Federal candidate species. Their report (Rawinski and Cassin 1986) indicated that sufficient information did not exist at that time to support listing *A. virginica* as endangered or threatened. They recommended retention of this species in Category 2. Subsequent to the submission of this report, numerous developments precipitated the preparation of a proposal to list the species as threatened. These included: (1) The disappearance of four known occurrences of the species in North Carolina; (2) resolution of uncertainties about the species' taxonomic affiliations (Carulli and Fairbrothers 1988); (3) accomplishment of further surveys of potential habitat throughout its range; and (4) appearance of specific threats to the species' continued existence, particularly in New Jersey and Virginia. The Federal Register document proposing threatened status for *Aeschynomene virginica* was published on July 26, 1991 (56 FR 34162). With the publication of this final rule, the Service now determines threatened status for *Aeschynomene virginica*.

Summary of Comments and Recommendations

In the July 26, 1991, proposed rule (56 FR 34162) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Comments were requested from appropriate state agencies, county governments, scientific organizations, and other interested parties. Newspaper notices inviting public comment were published in a total of five newspapers in New Jersey, Virginia, Maryland, and North Carolina, all of local circulation in the areas where the joint-vetch occurs.

A total of 11 comments were received. Seven of these were from various regulatory agencies in the four states where the species occurs. All of these expressed support for the listing action, although New Jersey recommended endangered, rather than threatened status. The Service concurs that the sensitive joint-vetch is faced with many threats, some of which are imminent. However, the current range-wide distribution and status of *Aeschynomene virginica* is more in keeping with the definition of "threatened" (i.e. likely to become endangered within the foreseeable future) as opposed to the "imminent danger of extinction" criterion that an endangered designation would indicate.

The U.S. Army Corps of Engineers also expressed support for the listing, as did a private individual who lives on Virginia's Pamunkey River and has witnessed considerable degradation over the past few years. A letter from Mattamuskeet National Wildlife Refuge in North Carolina expressed willingness

to cooperate with surveys and recovery actions. A letter from the Maryland Department of Transportation expressed no position, but indicated their readiness to protect the species where it might be affected by one of their projects. A letter from the Chesapeake Bay Local Assistance Department of Virginia also expressed no position on the proposed listing. Many of the letters provided additional information, which has been incorporated into this rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Aeschynomene virginica* (L.) B.S.P. (sensitive joint-vetch) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The extirpation of the sensitive joint-vetch from Delaware and Pennsylvania and its elimination from many sites in other States can be directly attributed to habitat destruction. Many of the marshes where it occurred historically have been dredged and/or filled and the riverbanks bulkheaded or stabilized with riprap. This is most evident in historic locations around Philadelphia (Bruederle and Davison 1984). Other sources of potential or actual habitat destruction include impoundments and water withdrawal projects, road construction, commercial and residential development, and resultant pollution and sedimentation.

The remaining stronghold of *A. virginica* is in Virginia, along the relatively narrow band of freshwater tidal sections of several river systems on the coastal plain. These river sections are quite pristine, despite their proximity to the major metropolitan areas of Washington, DC and Richmond, Virginia. As the suburbs associated with these cities expand, the impacts to these river sections from residential and commercial development, shoreline stabilization activities, point and non-point source discharges, recreational use, water development projects, and sedimentation from building and road construction are all expected to increase greatly

Certain of these factors are known to be harmful to *Aeschynomene virginica*; others require further study to determine their effects. Shoreline stabilization, as in placement of riprap, can destroy the species' habitat directly. Increased motorboat traffic is known to be detrimental to freshwater tidal systems (A.E. Schyler, Philadelphia Academy of Natural Sciences, pers. comm. 1989). In addition to direct toxic effects from fuel leaks, the wave action from boat wakes can rapidly erode the mudflats and banks where the joint-vetch grows. Along narrower river sections, the wake from a single boat may affect both shorelines simultaneously. The letter of comment from the Pamunkey River resident attests to the erosive action of boat wakes.

Sedimentation could affect *A. virginica* by inhibiting germination, smothering seedlings and/or promoting the invasion of weedy species. Sipple (1990) notes that sedimentation of the Patuxent River in Maryland has allowed the common reed (*Phragmites australis*) to extend its range, displacing much of the wild rice (*Zizania aquatica*) that occurred historically along this river. Establishment of *Phragmites* or other invasive species could be especially detrimental to *A. virginica*, which has evolved to thrive in an environment with little competition from other plants.

Two specific projects could threaten New Jersey's large population of *A. virginica*. One is the extension of a major highway, which is proposed to cross the Manumuskin River in the vicinity of the population. The plants and their habitat could be destroyed directly, during the construction process, or indirectly, through input of sediments, road salt or petrochemicals. The other project is a coal-fired electric generating facility, proposed to be located less than a mile upstream from the population. There is concern that the disposal of by-products from this facility could degrate the plants' habitat.

Maryland's one known joint-vetch population is located in an area heavily impacted by humans, adjacent to a major highway, a sewage treatment plant, and a residential development. The population is dissected by two bridges, and its creek is channelized, beginning about one-half mile upstream. The population is also flanked by invasive weeds, including *Phragmites australis* and multiflora rose (*Rosa multiflora*). Fortunately, a larger segment of this population was discovered nearby in 1991, in a less heavily impacted setting.

In Virginia, most of the potential threats facing *Aeschynomene virginica* and its habitat are associated with population growth. Virginia's population, within the Chesapeake Bay watershed, is projected to increase by 32% by the year 2020, a rate nearly twice that predicted for Maryland (18%) and four times that for Pennsylvania (8%) (Year 2020 Panel 1988). In areas local to the occurrence of *Aeschynomene virginica*, growth rates may be even greater. Over the past ten years, the human population of King William County near the Mattaponi River joint-vetch population has grown more than 60 per cent (Oberg 1990), and this growth rate is projected to continue.

Residential development associated with this population increase is becoming evident. In early 1991, a 200-acre subdivision was completed in eastern King and Queen County. This development includes a boat launch and pier on the Mattaponi. In the western part of the county, efforts are underway to secure the necessary zoning for a 500-acre development, which would include river access, an 18-hole golf course, and other amenities. Without careful planning, such developments are likely incompatible with the continued existence of *Aeschynomene virginica*. The plants' habitat can be destroyed by the construction of piers and dredging for boat slips or other recreational purposes. Additionally, water quality degradation in streams harboring *A. virginica* can result from runoff of pesticides, fertilizers, and other chemicals used on golf courses, lawns, and gardens. Increased sewage effluent in the area may result in increased nutrient loading or pollution of local stream systems. One commentor on the proposed rule noted catching "grossly distorted catfish" and "living oysters with the shells badly corroded away" from the Pamunkey. The relationship between these observations and potential adverse impacts to the joint-vetch are unclear, but these observations certainly indicate that water quality in the area should be closely monitored.

Tremendous development pressures are also found close to the Washington, DC area. In 1987, a 1000-acre development was proposed on the Widewater Peninsula, a finger of land in Stafford County, Virginia that harbors the sole known Potomac River occurrence of *Aeschynomene virginica*. The original proposal called for over 3150 dwellings, a conference center, golf course, air strip, stores, offices, a 1000-slip marina, and industrial uses. This proposal required a re-zoning, which was rejected. However, several alternative planned developments have

been proposed, and the current intended land use of this area is for relatively high intensity waterfront development, which, without careful planning, may not be compatible with the continued existence of *A. virginica* or other freshwater tidal marsh plants.

In addition to expanded residential development, the population increase in Virginia will be accompanied by an increased demand for potable water. Tidal freshwater river systems are the source of freshwater in closest proximity to coastal communities and the obvious choice for obtaining this necessary commodity. The construction of Walker's Dam has already eliminated the tidal influence on a significant portion of the Chickahominy River, and it may have altered joint-vetch habitat in the process.

Currently, the Newport News Waterworks projects a water deficit of 35 million gallons per day (mgd) by the year 2040. The utility is beginning to evaluate numerous water supply options, three of which could potentially affect *A. virginica* habitat. The first alternative is withdrawal of 40 mgd from the James River above Richmond. A second alternative would involve a pumpover from the Pamunkey and Chickahominy Rivers (a 40 mgd withdrawal rate is proposed for each river). A third alternative calls for a maximum 75 mgd withdrawal from the Mattaponi River (B. Gladden, TNC, Charlottesville, VA, pers. comm. 1991).

Spotsylvania County has projected that it will need to increase its capacity to provide potable water by 1995. The County has applied for a permit to withdraw some 8.2 mgd from Po Creek (a tributary of the Mattaponi River). Stafford and Spotsylvania Counties and the City of Fredericksburg are also discussing a 24 mgd withdrawal from the Rappahannock River at Fredericksburg.

Hanover County, Virginia proposes to begin operating a reservoir for public water supply to the Mechanicsville-Chickahominy area by the end of this century. The reservoir would be created by constructing a cross-stream impoundment on Crump Creek, a tributary to the Pamunkey River. The implementation of this proposal would include a 25 mgd withdrawal from the Pamunkey River.

The effects of these proposed water supply projects on *A. virginica* are very likely to be detrimental and clearly need to be evaluated, both on a local and a regional basis. The withdrawal of large amounts of freshwater could raise the salinity of the marsh systems occupied by the joint-vetch, possibly beyond the species' tolerance limits. Other plant and animal species in this community type might be adversely impacted along with the entire system. Salinity changes might also promote the invasion of weedy plant species that could readily out-compete the joint-vetch. It is likely that the growing demand for water in southeastern Virginia can be met without extirpating *A. virginica* or destroying the unique and important ecosystem that it inhabits, but this will require careful planning.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

A. virginica has not been a target for collection, since it grows in a specialized habitat and would not survive under normal garden conditions. The plant has been collected in the past for scientific study. The increased visibility of the species as a result of the publication of this rule might increase the perceived value of speciments to collectors.

C. Disease or Predation

Observations in North Carolina have indicated severe predation of seeds by tobacco budworms and corn earworms (Leonard 1985). It is unlikely that these predators will prove to be a problem in other populations throughout the species' range, as they do not occur in typical wetland habitat.

D. The Inadequacy of Existing Regulatory Mechanisms

The sensitive joint-vetch is listed as endangered by the States of Maryland, New Jersey, and North Carolina, but not in Virginia. The Maryland Threatened and Endangered Species regulations (COMAR 08.03.08) prohibit taking of endangered plant species from State property except by special permit and further prohibit taking from private property without the written permission of the landowner. However, these regulations do not prohibit alteration of the habitat in which these species occur. Protection of habitat is afforded *Aeschynomene* under Maryland's Critical Areas regulations (COMAR 14.15.09), which prohibit any activity that may adversely affect any endangered or threatened species or its habitat within 100 feet of the upper limit of a tidal wetland. However, implementation of these regulations may be variable, because protection measures are developed and administered by local jurisdictions. The joint-vetch is afforded legal protection in North Carolina by North Carolina general statutes §§ 106–202.122, 106–202.19 [CUN.SUP.1985], which prohibit interstate trade without a permit, prohibit taking without written permission of landowners, and provide for monitoring and management of state-listed species. However, this legislation provides no habitat protection for listed species. In Virginia, the state with the greatest number of populations of *A. virginica*, provides no protection. Listing *A. virginica* under Virginia's Endangered Plant and Insect Species Act (title 3.1, chapter 39), would protect it from take, but destruction or alteration of its habitat would be unregulated. In these states, listing under the Endangered Species Act would provide additional protection particularly for the habitat of *A. virginica*.

In New Jersey, numerous laws pertain to the protection of endangered plants. The New Jersey Endangered Plant Species List Act (NJ SA 13:1B—15.151–158) merely provides for the creation of a list of rare plants and offers no protection from take or habitat alteration. However, other state laws provide more substantial protection. Both New Jersey populations of *A. virginica* occur in wetlands regulated under the New Jersey Wetlands Act of 1970, which prohibits most non-water-dependent development within wetlands, with some exceptions, such as powerline crossings. The entire Wading River population and the eastern half of the Manumuskin River population occur within the area protected by the Pinelands Protection Act (NJ AC 7:50—6.24), which prohibits any development that would adversely affect the survival of any local population of an endangered or threatened species. The regulations governing the Coastal Area Facility Review Act (N.J.S.A. 13:19–1 *et seq.*) state that habitat for endangered and threatened species on Federal or State lists or under active consideration for inclusion on either list will be considered "special areas". Development in these areas is prohibited unless it can be shown that the rare species' habitat would not be adversely affected. The Wading River population also falls within the area covered by this Act.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Whether due to causes mentioned under Factor A or to other as yet unidentified threats, the range of *Aeschynomene virginica* along river systems in Virginia is contracting. On both the Rappahannock and the James Rivers, *Aeschynomene virginica* was collected historically some 10 miles further upstream and downstream than it is currently known to exist. It remains

on only one section of the Chickahominy River, where it once had a much broader distribution, as noted from historical collections (T. Wieboldt, VPI&SU Herbarium, pers. comm. 1990).

It has been speculated that the existence of joint-vetch may be threatened over the long term by sea level rise. This phenomenon could result in merely "pushing" the species' habitat upstream from its present position. However, the location of major cities and other developed areas upstream from the fresh/brackish water interface in many locations might block the upstream migration of natural freshwater marsh communities and their component species, including *A. virginica.*

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Aeschynomene virginica* as threatened. The species is not in immediate danger of extinction, due primarily to its current distribution along six river systems in Virginia. However, the best available data indicate that it qualifies as a threatened species, based on the projected outlook for human population increase and associated commercial and suburban development, demand for water, and increased human use along these river systems. Increased development has proven to be detrimental to *A. virginica* and its specialized habitat, as indicated by the species' extirpation from two States and numerous counties in the States where it is yet extant.

Critical Habitat

Section 4(a)(3) of the Act as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species at this time because the benefits of publicizing critical habitat are outweighed by added risks. Publication of critical habitat is not in the best interest of this species. The rarity of this species and its restricted range make the plants particularly vulnerable to taking. Taking is an activity difficult to prevent, and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make the joint-vetch more vulnerable and increase problems. Adding the plant to the List of Endangered and Threatened Plants publicizes rarity and thus can make them attractive to curiosity seekers or expose them to potential vandalism. Though prohibited by the Act, taking and vandalism are difficult to control on the ground. The plant is sedentary which makes it particularly vulnerable. The principal land managers have been notified of the location of the species and are aware of the importance of protecting the species' habitat.

Protection of these species habitat will be addressed through the recovery process and section 7 jeopardy standard. Any federal action that would impact the plants' habitat would necessarily affect the plants themselves (being immobile, rooted organisms) and would be review during section 7 consultation. The Service finds that designation of critical habitat is not presently prudent for the plant species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, States, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Private developers who are working without any Federal permits, other authorizations, or monies, will be unaffected under this rule with respect to section 7(a), but would be subject to restrictions against take, as specified in section 9 of the Act and implementing regulations.

Because *A. virginica* occurs in wetland habitats, many projects potentially affecting it would be within the permitting authority of the U.S. Army Corps of Engineers. The water supply and development projects mentioned under Factor A are among such projects.

Ths listing of this plant also brings sections 5 and 6 of the Endangered Species Act into full effect on its behalf. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to section 6, the Service may grant funds to affected states for management actions aiding the protection and recovery of the species.

Listing the sensitive joint-vetch as threatened provides for development of a recovery plan. Such a plan will bring together State, Federal, and private efforts for conservation of species. The plan will establish an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan will also set recovery priorities and estimate the cost of various studies or other tasks necessary to accomplish them. It will assign appropriate functions to each agency and a time frame within which to complete them. It also identifies specific areas that need to be monitored and possibly managed for the species.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the

removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this rule is Judy Jacobs, Annapolis Field Office, U.S.Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (410) 269–5448.

List of Subjects in 50 CFR Part 17

Endangered and threatened species. Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations is amended, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the family Fabaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Bean family						
*	*	*	*			
Aeschynomene virginica	sensitive joint-vetch	U.S.A. (DE*, MD, NC, NJ, PA*, VA)	T	4FO	NA	NA
*	*	*	*			

Dated: May 7, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–11828 Filed 5–19–92; 8:45 am]

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federal register

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May 20, 1992

Part VIII

Environmental Protection Agency

40 CFR Part 300

OSWER Procedures for Contract Laboratory Program Investigations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3977-6]

OSWER Procedures for Contract Laboratory Program Investigations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes procedures for the Environmental Protection Agency (EPA) Office of Solid Waste and Emergency Response (OSWER) to deal consistently with Contract Laboratory Program (CLP) laboratories under investigation for alleged fraud. These procedures are designed to mitigate potential damage to the Government, protect the Government from harm, and maintain due process or other legal rights of CLP laboratories or individuals under investigation. The proposed rule protects the authenticity and reliability of CLP data and the validity of EPA decisions made using CLP data.

DATES: Comments must be submitted on or before June 19, 1992.

ADDRESSES:

Comments: Written comments (an original and two copies) may be submitted to the Superfund Docket, located in room M2427, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

Docket: Copies of materials relevant to this proposed rulemaking are contained in room M2427 at the Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 [Docket Number NCP–CLP]. The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket should be made by calling 1–202/260–3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: Hans J. Crump-Wiesner, Hazardous Site Evaluation Division, Environmental Protection Agency, OS–230, 401 M Street, SW., Washington, DC 20460, (202) 260–7906.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is issuing a proposed rule that establishes procedures for dealing consistently with CLP laboratories under investigation for alleged fraud. The CLP laboratories generate analytical data for EPA's OSWER programs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) of 1980, as amended (42 U.S.C. 9601–9675). This proposed rule would amend the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) by adding an appendix.

The proposed rule applies only to analytical laboratory services contracted from private sector environmental laboratories for the Superfund CLP. The rule is not applicable to laboratory services provided by contract to other EPA programs, such as the Office of Pesticides and Toxic Substances or the Office of Water.

II. Background

Since 1981, EPA has administered the CLP to support the Superfund mission to protect human health and the environment from actual and threatened releases of hazardous substances, pollutants, and contaminants. The CLP generates data from analyses of more than 100,000 samples per year taken from Superfund sites. EPA uses these data to determine the need for removal and remedial response actions at those sites and to support Superfund monitoring and enforcement activities. EPA also may use the data to support other site response actions, including operation, maintenance, and closure activities.

The CLP consists of a nationwide community of analytical laboratories, EPA organizations, and associated contractors. It is managed by the Analytical Operations Branch, Hazardous Site Evaluation Division of the Office of Emergency and Remedial Response in OSWER, located at EPA Headquarters in Washington, DC. EPA support for implementing the CLP is provided by the EPA Sample Management Office (SMO) contractor, the Environmental Monitoring Systems Laboratory, the National Enforcement Investigations Center, the Environmental Services Assistance Team contractor, and the ten EPA Regional offices.

Analytical contractors participating in the CLP, which is not a certification program, perform chemical analyses of samples taken from Superfund sites across the country. They provide Routine Analytical Services (RAS) and Special Analytical Services (SAS) for organic and inorganic compounds. RAS contracts are awarded directly by EPA under a competitive sealed-bid procurement method. CLP laboratories perform SAS under subcontracts awarded through the SMO.

To be selected for a CLP RAS contract, laboratories must meet stringent requirements and standards for equipment, personnel, and laboratory practices including analytical procedures and quality control and quality assurance activities. Before CLP contracts are awarded, laboratories are required to successfully analyze performance evaluation samples and may be required to pass a pre-award laboratory site evaluation.

SAS are performed under subcontracts for the analysis of samples not amenable to RAS contract mechanisms. A SAS subcontract is awarded through the SMO based on requirements and conditions specified in a SAS client request form submitted by an EPA client. The SMO is the prime contractor and the private sector SAS laboratory is the subcontractor.

After contract award, CLP laboratories are closely monitored for compliance with the terms and conditions of the contracts. Each sample processed by CLP laboratories must be documented properly to ensure timely, correct, and complete analysis for all parameters requested, and most importantly, to support the potential use of sample data in EPA response actions and enforcement actions.

In accordance with the EPA's Office of Inspector General (OIG) mission to prevent and detect fraud, waste, and abuse, the OIG has and will continue to investigate contractors to detect potential fraud and other corrupt practices that may compromise the authenticity and reliability of CLP data.

As a result of these investigations, EPA has referred potential criminal and civil actions to the Department of Justice (DOJ), and suspended, proposed for debarment, or debarred several laboratories and/or individuals from receiving new contracts and from future participation in Federal non-procurement programs. EPA issued these suspension and debarment actions pursuant to Federal Government-wide suspension and debarment regulations, which provide Government contractors and assistance participants procedural rights under Federal law (48 CFR subpart 9.4 and 40 CFR part 32).

EPA has discontinued use of existing CLP contracts with suspended laboratories pending the disposition of administrative or judicial action. Due to the nature and terms of CLP contracts, EPA also has stopped ordering sample analyses from laboratories under OIG investigation, once a Notice of Scheduled Investigation (NSI) has been

issued, through a mechanism called a Contracting Officer Stop Shipment (COSS) notice. Although the number of instances involving fraud in the CLP so far has not been great, even the small number of allegations of fraud jeopardize the integrity of the Superfund program.

EPA is issuing this proposed rule to protect the authenticity and reliability of CLP-generated data for the Superfund program. It generally prescribes procedures for Superfund program employees to follow when CLP laboratories and individuals become the subject of an OIG investigation involving allegations of fraud or other corrupt practices. These procedures are designed to provide maximum protection for Superfund programs within the bounds of Federal law. The actions taken by OSWER employees under this proposed rule would have no effect on the status of current CLP contracts or on the eligibility of CLP laboratories/individuals to receive or participate in Federal contracts and financial assistance. Subject to applicable law, decisions affecting the administration of existing CLP contracts and the eligibility of laboratories/individuals can be made only by, respectively, an EPA Contracting Officer and the EPA Suspension and Debarment Official. Such decisions are subject to due process or other applicable legal requirements.

III. Paragraph-by-Paragraph Analysis

Paragraph A contains a general statement of the purpose of this proposed rule, which is designed to protect the authenticity and reliability of analytical data for the Superfund program.

Paragraphs B and C prescribe the role of Superfund program employees in protecting the CLP from potential fraud or other corrupt practices of participating laboratories. Specifically, the paragraphs direct Superfund program employees to report all allegations or suspicions of fraud, waste, or abuse involving CLP laboratories to the OIG and to cooperate fully in OIG investigations.

Paragraph D outlines specific actions for OSWER to take when evidence of fraud or other corrupt practices is found. These actions include referring cases to EPA's Grants Administration Division for suspension and debarment, and requesting that EPA's Procurement and Contracts Management Division place existing contracts on COSS when a laboratory becomes the subject of an OIG investigation. OSWER may also consult with EPA's Office of General Counsel about initiating civil or criminal proceedings, including actions seeking damage recoveries. In particular, Paragraph D describes the limited circumstances in which Superfund program employees may recommend or direct action regarding existing or future contracts with laboratories or individuals under OIG investigation.

Paragraph D also expresses EPA's view that other Federal agencies, States, prime contractors, and potentially responsible parties (PRPs) at Superfund sites are to ensure that only responsible laboratories are proposed for use in quality assurance project plans submitted for EPA's review and approval under the NCP. In reviewing quality assurance project plans, EPA will consider all relevant information available regarding the integrity of a proposed laboratory. The proposed rule provides that, notwithstanding its approval of a quality assurance project plan, EPA reserves the right to exclude from use data generated by laboratories that are the focus of an investigation, in the absence of satisfactory evidence that the data are not compromised. This allows EPA to ensure that data generated by laboratories under OIG investigation are not used until EPA determines the data are not compromised.

Paragraph E identifies the circumstances in which OSWER will notify EPA offices and outside parties (including other Federal agencies, States, prime contractors, and PRPs) about laboratories under OIG investigation. Except for information available to the public, the notification provisions of the proposed rule generally restrict disclosures of information concerning laboratories under OIG investigation to EPA offices, other Federal entities, and contractors for very limited purposes. The proposed rule provides that OSWER will notify appropriate EPA offices if a laboratory under investigation has been issued a COSS; has received notice of suspension, debarment, contract discontinuance or termination; or is deemed otherwise ineligible.[1] Similarly, investigative information authorized for release by the OIG and DOJ will be made available to EPA offices, including contracting officers, but only for contract administration purposes, including new contract responsibility and subcontract approval determinations and contract termination decisions.

With the exception of EPA's SMO contractor, OSWER ordinarily will not notify outside parties that a laboratory is under investigation or COSS. OSWER's notification to outside parties generally is limited to notices concerning laboratories/individuals that have been suspended, debarred, or deemed otherwise ineligible. This information is either publicly noticed by the General Services Administration or otherwise available to the public. OSWER will notify outside parties of investigative information authorized for release only for the purpose of making contractor responsibility determinations under applicable Federal procurement regulations and only if the recipient agrees not to further disclose the information.

It is not OSWER's intent that the notification procedures operate to establish a "blacklist" of CLP laboratories. In that regard, EPA has declined to provide outside parties with copies of OIG NSIs or COSS letters on a regular basis. Copies of COSS letters may be requested under the Freedom of Information Act (FOIA) (5 U.S.C. 552), but only will be released pursuant to EPA's obligations under FOIA.

Unless a laboratory is unable to meet CLP performance standards or is suspended, proposed for debarment, debarred, or deemed otherwise ineligible, the laboratory is eligible to receive CLP contracts and subcontracts. Consistent with Federal procurement law, however, a laboratory under OIG investigation may be denied a contract or subcontract on a limited basis if the contracting authority determines, based on available information, that the laboratory is not responsible to perform the work successfully. (See, e.g., Comp. Gen. Dec. B–234727 (1989).)

The notification provisions of the proposed rule highlight the careful balance between the legal rights of CLP laboratories and the competing demands of OSWER to protect public health and the environment under CERCLA. OSWER believes that these notification provisions meet that objective. The proposed rule defines the circumstances when it may be appropriate to inform notified parties of significant changes in the status of CLP investigations and EPA actions against laboratories under investigation.

IV. Request for Public Comments

EPA is publishing today's notice of proposed rulemaking and seeking public comment on the rule and, in particular, the notification provisions in the rule.

[1] "Ineligible," as used in this Appendix, means excluded from Federal government contracting, Government-approved subcontracting, grants, loans, and assistance programs pursuant to a determination under statutory, Executive Order, or regulatory authority. (See E.O. 12549, 48 CFR subpart 9.4, and 40 CFR part 32.)

V. Impact Analyses

A. Executive Order 12291

Under Executive Order No. 12291, EPA must judge whether a rule is "major" and thus subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because the proposed rule will not result in an effect on the economy of $100 million or more, and will not have significant adverse effects on competition, employment, investment, or export markets. Therefore, EPA has not prepared a Regulatory Impact Analysis under the Executive Order. This proposed rule was submitted to the Office of Management and Budget as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

Whenever an agency is required by law to publish a general notice of proposed rulemaking, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) generally requires that the agency prepare a Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities. Because the proposed rule is not required to be published as a notice of proposed rulemaking under section 553 of the Administrative Procedure Act (5 U.S.C. 553) or any other law, it is not subject to the requirements of the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This rule contains no information collection activities and, therefore, no information collection request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Incorporation by reference, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: May 11, 1992.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 300 as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9675; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

2. Appendix E is being added to read as follows:

Appendix E to Part 300—OSWER Procedures for Contract Laboratory Program Investigations

A. Purpose

1. This Appendix to part 300 outlines the actions the Environmental Protection Agency (EPA) Office of Solid Waste and Emergency Response (OSWER) will take to protect the authenticity and reliability of analytical data generated for OSWER's Superfund programs by laboratories participating in the Contract Laboratory Program (CLP) and the validity of EPA decisions made using CLP data.

2. The CLP, which is administered by the Analytical Operations Branch (AOB) in the Hazardous Site Evaluation Division of EPA's Office of Emergency and Remedial Response, provides technically valid and legally defensible analytical data for use in supporting ongoing EPA Superfund enforcement actions, response action decisions, and other requirements of the Superfund program. A level of quality assurance and documentation appropriately designed for the intended purposes of the data has been incorporated, therefore, into all aspects of CLP program activities. OSWER will take the actions outlined in this Appendix in the event that a laboratory and/or individual operating in the CLP is the subject of an investigation by the EPA Office of the Inspector General (OIG), due to allegations of fraud or other corrupt practices.

3. The procedures in this Appendix will aid the internal management of EPA and are not intended to create any right or benefit enforceable at law by a party against EPA or its officers or employees.

B. Reporting

All allegations or suspicions of fraud, waste, or abuse involving a CLP laboratory/individual will be reported immediately to the EPA OIG by any EPA employee or contractor associated with Superfund programs. Reporting fraud to the OIG is a duty of all EPA employees.

C. Cooperation

All EPA employees shall cooperate fully with the OIG during the course of a preliminary inquiry and any subsequent investigation. The cooperation will include, but not be limited to, providing all relevant information associated with the laboratory/individual, fulfilling all information requests by the OIG, providing technical assistance to the OIG, and making on-site visits that may be required during the course of the preliminary inquiry and any subsequent investigation. EPA employees also will cooperate with other Federal authorities, including the Department of Justice (DOJ), in matters related to preliminary inquiries, investigations, and criminal and civil referrals and prosecutions.

D. OSWER Action

1. After reviewing a Notice of Scheduled Investigation (NSI) received from the OIG for a current CLP contractor, the AOB will request EPA's Procurement and Contracts Management Division (PCMD) to consider:

a. Issuing a Contracting Officer Stop Shipment (COSS) letter informing the laboratory under investigation that EPA will not order any sample analyses (including performance evaluation (PE) samples prepared for the Environmental Monitoring Systems Laboratory) under the laboratory's CLP Routine Analytical Services RAS contract(s) pending completion of the OIG investigation, but that the Contracting Officer (CO) periodically will review any information about the investigation that is made available by the OIG;

b. advising the Sample Management Office (SMO) to cease scheduling RAS samples (including PE samples) to the laboratory; and

c. monitoring the SMO's award and administration of Special Analytical Services subcontracts.

2. In cases where evidence of fraud or other corrupt practices is found, OSWER will take action to protect the Government's interest by referring the matter to the EPA Grants Administration Division (GAD) to pursue suspension and/or debarment of the laboratory/individual in accordance with 48 CFR subpart 9.4 (Debarment, Suspension, and Ineligibility) and 40 CFR part 32 (Government-wide Debarment and Suspension (Non-procurement)). OSWER also will request that the EPA PCMD discontinue the use of any existing contracts with the laboratory/individual under OSWER programs, concurrent with any suspension, debarment, or other actions deeming the laboratory/individual ineligible.

OSWER may request that the CO consider terminating existing CLP contracts. OSWER also should consult with the EPA Office of General Counsel (OGC)/Inspector General Division about the possible recovery of damages in connection with the alleged fraud.

3. Except as otherwise provided in this paragraph, Headquarters and Regional employees in Superfund programs will not recommend or direct any action by other Federal agencies, States, prime contractors (including the SMO contractor), or potentially responsible parties (PRPs) with regard to their existing or future contracts with a laboratory/individual under investigation. In consultation with GAD and PCMD, however, Superfund program employees may take actions pursuant to the applicable regulations with respect to a laboratory/individual that has been suspended, proposed for debarment, debarred, or deemed otherwise ineligible. Under the terms and conditions of settlement agreements, consent decrees, or administrative orders with PRPs, Superfund program employees may direct PRPs not to use contractors that are suspended, debarred, or deemed otherwise ineligible. In addition, Superfund program employees shall request that COs for Superfund programs use the information available to them, consistent with applicable law, to make responsibility determinations, consent determinations on proposed subcontracts, and contract termination decisions.

4. OSWER will request that the EPA Regions not accept or approve work plans submitted by PRPs that propose to ship samples to a laboratory that is under suspension, debarment, or deemed otherwise ineligible.

5. It is EPA's position that other Federal agencies, States, and prime contractors are to take actions that are consistent with EPA's actions regarding contractors that have been suspended, debarred, or deemed otherwise ineligible. These parties are to make contractor responsibility determinations and contract administration and termination decisions based on the information available to them, in accordance with applicable regulations.

6. It is EPA's position that other Federal agencies, States, and prime contractors are to ensure that quality assurance project plans they submit for EPA review and approval under the Superfund program propose to use only laboratories/individuals that are deemed responsible in accordance with applicable regulations (including 48 CFR parts 9 and 44 and 40 CFR section 31.36(b)(8)). Any laboratory/individual proposed to conduct analytical work in the quality assurance project plan work will produce adequate data for the intended use pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and applicable project plans and EPA guidance. In accordance with OSWER Directive 9835.8, "Model Statement of Work for Remedial Investigation and Feasibility Study Conducted By Potentially Responsible Parties," a PRP will demonstrate in advance, to EPA's satisfaction, that each laboratory it may use is qualified to conduct the proposed work. EPA will consider all relevant investigative information authorized for release jointly by the OIG, and the appropriate criminal and civil authorities at DOJ, if applicable, in EPA's review and approval of Superfund program quality assurance project plans under the NCP.

Other Federal agencies, States, prime contractors, or PRPs may consult the laboratory/individual to determine whether EPA or any other organization has taken any action with regard to that laboratory/individual that may affect their determination of the laboratory's/individual's responsibility or the adequacy of the laboratory's/individual's data.

7. Notwithstanding EPA review and approval of any Superfund program quality assurance project plans under the NCP, if other Federal agencies, States, prime contractors, or PRPs submit data from samples shipped to a laboratory during the time period that is the focus of the investigation, the EPA Superfund program reserves the right to exclude or limit the use of these data in its decision-making, in the absence of satisfactory evidence that the data are not compromised.

E. Notification

1. When the OIG issues an NSI regarding a CLP laboratory/individual, it routinely sends a copy to the OGC/Inspector General Division, the AOB, and the Regional Administrator of the Region in which the laboratory is located. The OGC/Inspector General Division will be responsible for forwarding a copy of all CLP NSIs it receives to the DOJ Civil Division and to the Associate Enforcement Counsel for Superfund in the Office of Enforcement (OE). OSWER will notify appropriate EPA offices of a COSS, suspension, debarment, contract discontinuance or termination, and other actions that deem the laboratory/individual ineligible. In addition, it is OSWER's policy to provide the EPA Regions, the OE, and the DOJ Environmental Enforcement Section (EES) with a list of potentially affected sites that have had samples analyzed by the laboratory. If investigative information is authorized for release by the OIG, and by DOJ, if applicable, OSWER will provide that information to the EPA Regions, OE (including the National Enforcement Investigations Center), EES, the Environmental Monitoring Systems Laboratory—Las Vegas, and to COs for use in making contractor responsibility determinations for new awards, subcontract consent determinations, and contract termination decisions.

2. Headquarters and Regional employees of the Superfund program will notify other Federal agencies, States, prime contractors, and PRPs of any suspension, debarment, contract discontinuance or termination, or other actions that deem the laboratory/individual ineligible. In general, Superfund employees will not affirmatively notify these parties of any COSS or NSI; however, AOB will notify the SMO contractor of any COSS. Where OIG, and DOJ, if applicable, authorize the limited release of investigative information, Superfund employees will notify other Federal agencies, States, prime contractors, and PRPs of that information for contractor responsibility determinations, subject to their agreement not to disclose such information.

3. Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, the public may request a copy of the COSS notice; however, this information will be released only if required under EPA's FOIA obligations. FOIA requests for copies of NSIs will be referred to the OIG.

4. Inquiries from outside EPA to employees of Superfund programs regarding the investigation of a laboratory/individual will be referred to the OIG. Headquarters or Regional employees under the Superfund program will not provide information concerning the existence or non-existence of an ongoing investigation. Inquiries regarding contract discontinuance or termination will be referred to PCMD and those regarding suspensions, debarments, or other actions that deem a laboratory/individual ineligible will be referred to GAD.

5. The Superfund program should ensure that all parties that were previously notified are informed when an investigation is closed, or when a Superfund contract laboratory has been indicted, convicted, the subject of a civil fraud judgment, or suspended or debarred.

[FR Doc. 92-11838 Filed 5-19-92; 8:45 am]
BILLING CODE 6560-50-M

federal register

Wednesday
May 20, 1992

Part IX

The President

Federal Register
Vol. 57, No. 98
Wednesday, May 20, 1992

Presidential Documents

Title 3—

The President

Proclamation 6438 of May 18, 1992

National Huntington's Disease Awareness Month, 1992

By the President of the United States of America

A Proclamation

Huntington's disease is an insidious, hereditary neurological disorder that causes the gradual deterioration of one's ability to speak, move, and think. The National Institute of Neurological Disorders and Stroke reports that some 25,000 Americans have Huntington's disease, and that each of their children has a 50 percent chance of inheriting the defective gene that is associated with it.

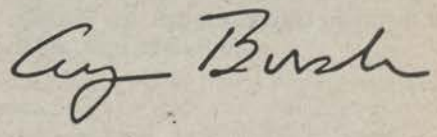
One of the tragic facts about Huntington's disease is that it usually becomes manifest in the middle years, after an individual has established a career and a family. The estimated 125,000 Americans who are at risk of developing the disease may spend years anxiously awaiting the appearance of symptoms, such as tics, lapses in memory, and unsteadiness. If an individual develops Huntington's disease, the resulting dementia, slurred speech, and uncontrollable movements progressively worsen. For those fortunate not to develop the disorder, Huntington's disease can nevertheless take an emotional and financial toll as they care for stricken loved ones.

Today, patients and their families have just cause for hope; a new era of discovery is unfolding in research on Huntington's disease. Members of the biomedical research community are aggressively pursuing studies to identify the exact location of the gene associated with Huntington's disease and to learn how it functions in the body. Once the gene is located and its mechanism of action is exposed, scientists will be able to analyze and possibly to correct the defect, thereby conquering Huntington's disease once and for all. Until scientists achieve these goals, however, affected individuals and families will continue to need our understanding and our support.

In order to enhance public awareness of Huntington's disease and to express concern for those affected by it, the Congress, by Senate Joint Resolution 251, has designated May 1992 as "National Huntington's Disease Awareness Month" and has requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 1992 as National Huntington's Disease Awareness Month. I encourage all Americans to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of May, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 92-12035
Filed 5-19-92; 11:33 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6439 of May 18, 1992

World Trade Week, 1992

By the President of the United States of America

A Proclamation

At no time in recent history has international commerce been so important to the economic productivity and strength of the United States. As more and more peoples around the world join the ranks of free and democratic nations and reform their economies on the basis of market principles, American business, agriculture, and industry face unprecedented opportunities and challenges. Thus, it is fitting that we pause to recognize the role of international trade in creating jobs for our citizens while spurring America's productivity and competitiveness.

Today the success of U.S. exporters is driving our Nation's economy toward stronger growth. Last year, U.S. merchandise exports soared to a record high of $422 billion. Our trade deficit dropped to $66 billion, the lowest level since 1983. Exports not only mean jobs to the men and women who develop, grow, manufacture, and market products for sale abroad but also help to bring prosperity to our communities.

This Administration will continue to work in partnership with U.S. business and industry to promote the quality of American goods and services and to eliminate barriers to free and fair trade. The United States led the way in initiating the current set of negotiations on the General Agreement on Tariffs and Trade (GATT), and we will continue to work to bring the Uruguay Round to a successful conclusion. We also remain committed to the full implementation of our Enterprise for the Americas Initiative, as well as to the completion of a North American Free Trade Agreement, which will create a thriving market of 360 million consumers and an estimated $6 trillion annual output—the largest integrated market in the world. The United States is determined to advance our free trade agenda on both the multilateral and bilateral levels.

There remains tremendous export potential in America today, and much of it lies with small- and medium-sized companies. In fact, while the United States leads the world in exports, just 15 percent of our exporters account for more than 60 percent of the value of goods shipped across our borders. American businesses and industries, large and small, must take advantage of recent events in the world marketplace and recommit themselves to the aggressive pursuit of export markets abroad. The Trade Promotion Coordinating Committee, which is chaired by the Secretary of Commerce and comprised of 18 Federal agencies, was established to coordinate government export programs and to assist American businesses in their exporting efforts.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of May 17 through May 23, 1992, as World Trade Week. I encourage all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of May, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.

George Bush

[FR Doc. 92-12036
Filed 5-19-92; 11:34 am]
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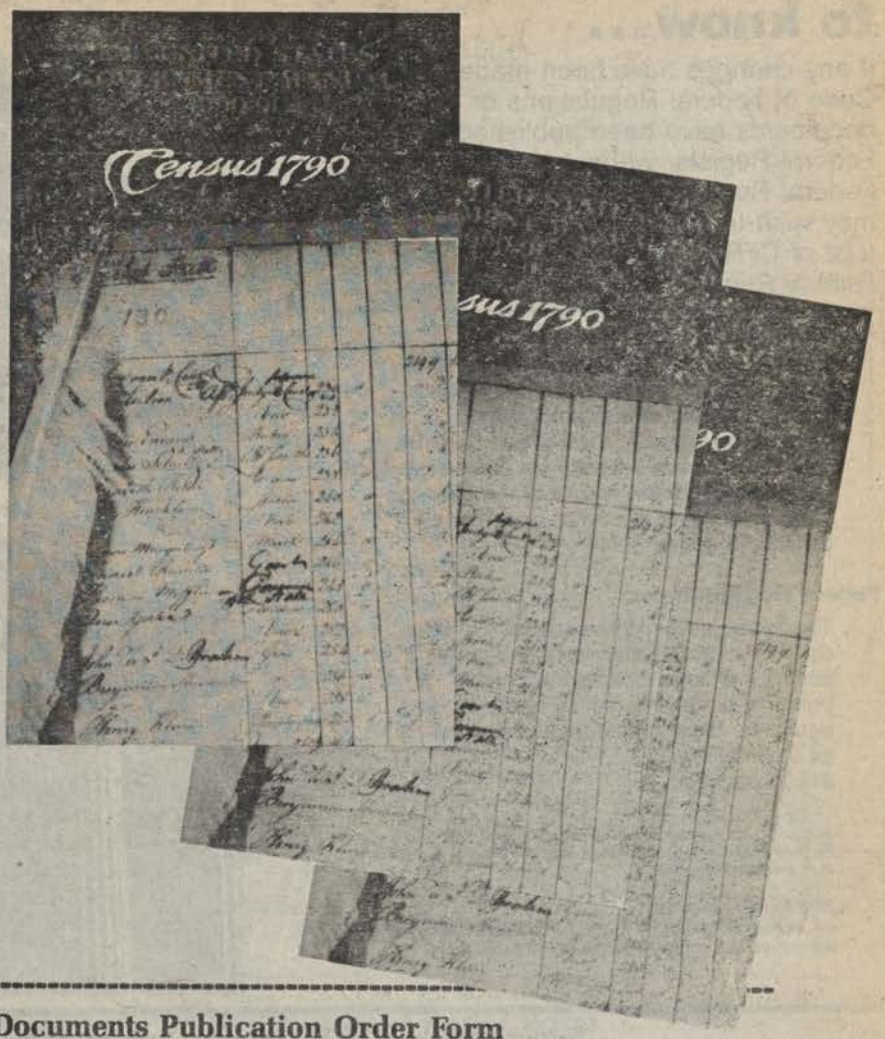

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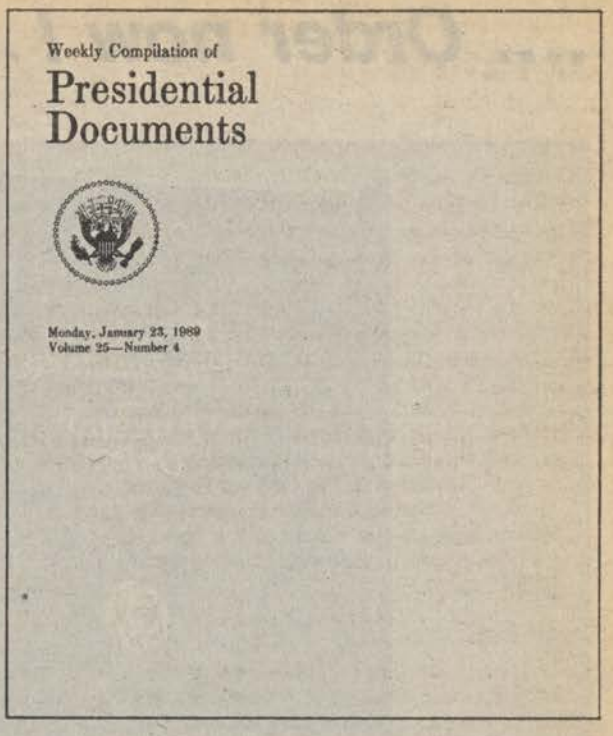

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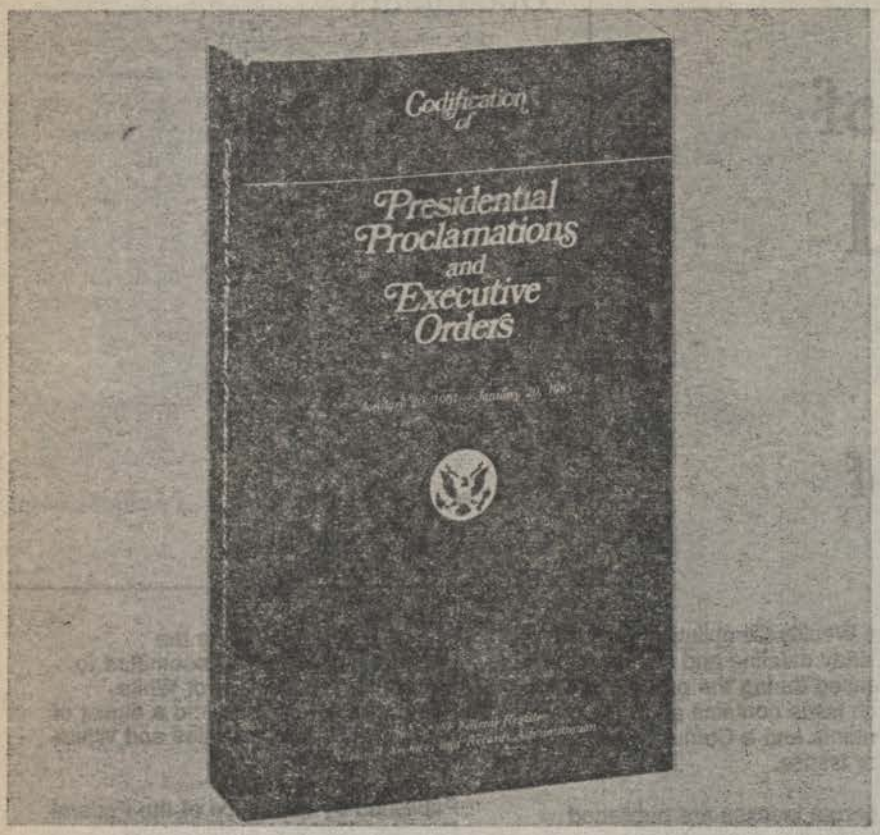

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